

SUBCHAPTER D—MINIMUM STANDARDS FOR EMPLOYEE PENSION BENEFIT PLANS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2530—RULES AND REGULATIONS FOR MINIMUM STANDARDS FOR EMPLOYEE PENSION BENEFIT PLANS

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AUTHORITY: Secs. 201, 202, 203, 204, 210, 505, 1011, 1012, 1014, and 1015, Pub. L. 93–406, 88

Stat. 852–862, 866–867, 894, 898–913, 924–929 (29 U.S.C. 1051–4, 1060, 1135, 26 U.S.C. 410, 411, 413, 414); Secretary of Labor's Order No. 13–76. Section 2530.206 also issued under sec. 1001, Pub. L. 109–280, 120 Stat. 780.

SOURCE: 41 FR 56462, Dec. 28, 1976, unless otherwise noted.

Subpart A—Scope and General Provisions

§ 2530.200a Scope.

§ 2530.200a-1 Relationship of the Act and the Internal Revenue Code of 1954.

(a) Part 2 of title I of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as “the Act”) contains minimum standards that a plan which is an employee pension benefit plan within the meaning of section 3(2) of the Act and which is covered under part 2 must satisfy. (For a general explanation of the coverage of part 2, see §2530.201-1.) Substantially identical requirements are imposed by subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1954 (hereinafter referred to as “the Code”) for plans seeking qualification for certain tax benefits under the Code. In general, the Code provisions apply to “qualified” pension, profit-sharing, and stock bonus plans described in section 401(a) of the Code, annuity plans described in section 403(a) of the Code and bond purchase plans described in section 405(a) of the Code. The standards contained in title I of the Act apply generally to both “nonqualified” and “qualified” employee pension benefit plans. The standards contained in the Act, and the related Code provisions, are “minimum” standards. In general, more liberal plan provisions (in terms of the benefit to be derived by the employee) are not prohibited.

(b) For a definition of the term “employee pension benefit plan”, see section 3(2) of the Act and §2510.3-2.

(c) For a statement of the coverage of part 2 of the Act, see sections 4 and 201

of the Act and §§ 2510.3-2, 2510.3-3, 2530.201-1 and 2530.201-2.

§ 2530.200a-2 Treasury regulations for purposes of the Act.

Regulations prescribed by the Secretary of the Treasury or his delegate under sections 410 and 411 of the Code (relating to minimum standards for participation and vesting) shall apply for purposes of sections 202 through 204 of the Act. Thus, except for those provisions (such as the definition of an hour of service or a year of service) for which authority to prescribe regulations is specifically delegated to the Secretary of Labor, regulations prescribed by the Secretary of the Treasury shall also be used to implement the related provisions contained in the Act. Those regulations specify the credit that must be given to an employee for years of service and years of participation completed by the employee. The allocation of regulatory jurisdiction between the Secretary of Treasury or his delegate and the Secretary of Labor is governed by titles I through III of the Act. *See* section 3002 of the Act (88 Stat. 996).

§ 2530.200a-3 Labor regulations for purposes of the Internal Revenue Code of 1954.

The Secretary of Labor is specifically authorized to prescribe certain regulations (generally relating to hour of service, year of service, break in service, year of participation and special rules for seasonal and maritime industries) applicable to both title I of the Act and sections 410 and 411 of the Code. These regulations are contained in this subpart (A) and subpart B of this part (2530) and must be integrated with regulations prescribed by the Secretary of the Treasury or his delegate under sections 410 of the Code (relating to minimum participation standards), 411(a) of the Code (relating to minimum vesting standards) and 411(b) of the Code (relating to benefit accrual requirements). The allocation of regulatory jurisdiction between the Secretary of Labor and the Secretary of the Treasury or his delegate is governed by titles I through III of the Act. *See* section 3002 of the Act (88 Stat. 996).

§ 2530.200b-1 Computation periods.

(a) *General.* Under sections 202, 203 and 204 of the Act and sections 410 and 411 of the Code, an employee's statutory entitlements with regard to participation, vesting and benefit accrual are generally determined by reference to years of service and years of participation completed by the employee and one-year breaks in service incurred by the employee. The units used for determining an employee's credit towards statutory participation, vesting and benefit accrual entitlements are in turn defined in terms of the number of hours of service credited to the employee during a specified period—in general, a twelve-consecutive-month period—referred to herein as a “computation period”. A plan must designate eligibility computation periods pursuant to § 2530.202-2 and vesting computation periods pursuant to § 2530.203-2, and, under certain circumstances, a defined benefit plan must designate accrual computation periods pursuant to § 2530.204-2. An employee who is credited with 1000 hours of service during an eligibility computation period must generally be credited with a year of service for purposes of section 202 of the Act and section 410 of the Code (relating to minimum participation standards). An employee who is credited with 1000 hours of service during a vesting computation period must generally be credited with a year of service for purposes of section 203 of the Act and 411(a) of the Code (relating to minimum vesting standards). An employee who completes 1000 hours of service during an accrual computation period must, under certain circumstances, be credited with at least a partial year of participation for purposes of section 204 of the Act and section 411(b) of the Code (relating to benefit accrual requirements). With respect to benefit accrual, however, the plan may not be required to credit an employee with a full year of participation and, therefore, full accrual for such year of participation unless the employee is credited with the number of hours of service or other permissible units of credit prescribed under the plan for crediting of a full year of participation (*see* § 2530.204-2 (c) and (d)). It should be noted that under some of the

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equivalencies which a plan may use under § 2530.200b-3 to determine the number of units of service to be credited to an employee in a computation period, an employee must be credited with a year of service or partial year of participation if the employee is credited with a number of units of service which is less than 1000 in a computation period. *See also* § 2530.200b-9, relating to elapsed time.

(b) *Rules generally applicable to computation periods.* In general, employment at the beginning or the end of an applicable computation period or on any particular date during the computation period is not determinative of whether the employee is credited with a year of service or a partial year of participation, or incurs a break in service, for the computation period. Rather, these determinations generally must be made solely with reference to the number of hours (or other units of service) which are credited to the employee during the applicable computation period. For example, an employee who is credited with 1000 hours of service during any portion of a vesting computation period must be credited with a year of service for that computation period regardless of whether the employee is employed by the employer on the first or the last day of the computation period. It should be noted, however, that in certain circumstances, a plan may provide that certain consequences follow from an employee's failure to be employed on a particular date. For example, under section 202(a)(4) of the Act and section 410(a)(4) of the Code, a plan may provide that an individual otherwise entitled to commence participation in the plan on a specified date does not commence participation on that date if he or she was separated from the service before that date. Similarly, under section 204(b)(1) of the Act and section 411(b)(1) of the Code, a plan which is not a defined benefit plan is not subject to section 204(b)(1) and (b)(3) of the Act and section 411(b)(1) and (b)(3) of the Code. Such a plan, therefore, may provide that an individual who has been a participant in the plan, but who has separated from service before the date on which the employer's contributions to the plan or forfeitures are allocated

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among participant's accounts or before the last day of the vesting computation period, does not share in the allocation of such contributions or forfeitures even though the individual is credited with 1000 or more hours of service for the applicable vesting computation period. Under certain circumstances, however, such a plan provision may result in discrimination prohibited under section 401(a)(4) of the Code. *See* Revenue Ruling 76-250, I.R.B. 1976-27.

§ 2530.200b-2 Hour of service.

(a) *General rule.* An hour of service which must, as a minimum, be counted for the purposes of determining a year of service, a year of participation for benefit accrual, a break in service and employment commencement date (or reemployment commencement date) under sections 202, 203 and 204 of the Act and sections 410 and 411 of the Code, is an hour of service as defined in paragraphs (a)(1), (2) and (3) of this section. The employer may round up hours at the end of a computation period or more frequently.

(1) An hour of service is each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer during the applicable computation period.

(2) An hour of service is each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence,

(i) No more than 501 hours of service are required to be credited under this paragraph (a)(2) to an employee on account of any single continuous period during which the employee performs no duties (whether or not such period occurs in a single computation period);

(ii) An hour for which an employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable

workmen's compensation, or unemployment compensation or disability insurance laws; and

(iii) Hours of service are not required to be credited for a payment which solely reimburses an employee for medical or medically related expenses incurred by the employee.

For purposes of this paragraph (a)(2), a payment shall be deemed to be made by or due from an employer regardless of whether such payment is made by or due from the employer directly, or indirectly through, among others, a trust fund, or insurer, to which the employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular employees or are on behalf of a group of employees in the aggregate.

(3) An hour of service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service shall not be credited both under paragraph (a)(1) or paragraph (a)(2), as the case may be, and under this paragraph (a)(3). Thus, for example, an employee who receives a back pay award following a determination that he or she was paid at an unlawful rate for hours of service previously credited will not be entitled to additional credit for the same hours of service. Crediting of hours of service for back pay awarded or agreed to with respect to periods described in paragraph (a)(2) shall be subject to the limitations set forth in that paragraph. For example, no more than 501 hours of service are required to be credited for payments of back pay, to the extent that such back pay is agreed to or awarded for a period of time during which an employee did not or would not have performed duties.

(b) *Special rule for determining hours of service for reasons other than the performance of duties.* In the case of a payment which is made or due on account of a period during which an employee performs no duties, and which results in the crediting of hours of service under paragraph (a)(2) of this section, or in the case of an award or agreement for back pay, to the extent that such award or agreement is made with respect to a period described in para-

graph (a)(2) of this section, the number of hours of service to be credited shall be determined as follows:

(1) *Payments calculated on the basis of units of time.* (i) Except as provided in paragraph (b)(3) of this section, in case of a payment made or due which is calculated on the basis of units of time, such as hours, days, weeks or months, the number of hours of service to be credited shall be the number of regularly scheduled working hours included in the units of time on the basis of which the payment is calculated. For purposes of the preceding sentence, in the case of an employee without a regular work schedule, a plan may provide for the calculation of the number of hours to be credited on the basis of a 40-hour workweek or an 8-hour workday, or may provide for such calculation on any reasonable basis which reflects the average hours worked by the employee, or by other employees in the same job classification, over a representative period of time, provided that the basis so used is consistently applied with respect to all employees within the same job classifications, reasonably defined. Thus, for example, a plan may not use a 40-hour workweek as a basis for calculating the number of hours of service to be credited for periods of paid absences for one employee while using an average based on hours worked over a representative period of time as a basis for such calculation for another, similarly situated employee.

(ii) *Examples.* The following examples illustrate the rules in paragraph (b)(1) of this section without regard to paragraphs (b)(2) and (3).

(A) Employee A was paid for 6 hours of sick leave at his normal hourly rate. The payment was therefore calculated on the basis of units of time (hours). A must, therefore, be credited with 6 hours of service for the 6 hours of sick leave.

(B) Employee B was paid his normal weekly salary for 2 weeks of vacation. The payment was therefore calculated on the basis of units of time (weeks). B is scheduled to work 37½ hours per week (although from time to time working overtime). B must, therefore, be credited with 75 hours of service for the vacation (37½ hours per week multiplied by 2 weeks).

(C) Employee C spent 3 weeks on a paid vacation. C's salary is established at an annual rate but is paid on a bi-weekly basis. The amount of salary payments attributable to be paid vacation was calculated on the basis of units of time (weeks). C has no regular work schedule but works at least 50 hours per week. The plan provides for the calculation of hours of service to be credited to employees in C's situation for periods of paid absences on the basis of a 40-hour workweek. C must, therefore, be credited with 120 hours of service for the vacation (3 weeks multiplied by 40 hours per week).

(D) Employee D spent 2 weeks on vacation, for which he was paid \$150. Although D has no regular work schedule, the \$150 payment was established on the assumption that an employee in D's position works an average of 30 hours per week at a rate of \$2.25 per hour. The payment of \$150 was therefore calculated on the basis of units of time (weeks). The plan provides for the calculation of hours of service to be credited to employees in D's situation for periods of paid absences on the basis of the average number of hours worked by an employee over a period of 6 months. D's employer's records show that D worked an average of 28 hours per week for a 6-month period. D must, therefore, be credited with 56 hours of service for the vacation (28 hours per week multiplied by 2 weeks).

(E) Employee E is regularly scheduled to work a 40-hour week. During a computation period E is incapacitated as a result of injury for a period of 11 weeks. Under the sick leave policy of E's employer E is paid his normal weekly salary for the first 8 weeks of his incapacity. After 8 weeks the employer ceases to pay E's normal salary but, under a disability insurance program maintained by the employer, E receives payments equal to 65% of his normal weekly salary for the remaining 3 weeks during which E is incapacitated. For the period during which he is incapacitated, therefore, E receives credit for 440 hours of service (11 weeks multiplied by 40 hours per week) regardless of the fact that payments to E for the last 3 weeks of the period during which he was incapacitated were

made in amounts less than E's normal compensation.

(2) *Payments not calculated on the basis of units of time.* (i) Except as provided in paragraph (b)(3) of this section, in the case of a payment made or due, which is not calculated on the basis of units of time, the number of hours of service to be credited shall be equal to the amount of the payment divided by the employee's most recent hourly rate of compensation (as determined under paragraph (b)(2)(ii) of this section) before the period during which no duties are performed.

(ii) For purposes of paragraph (b)(2)(i) of this section an employee's hourly rate of compensation shall be determined as follows:

(A) In the case of an employee whose compensation is determined on the basis of an hourly rate, such hourly rate shall be the employee's most recent hourly rate of compensation.

(B) In the case of an employee whose compensation is determined on the basis of a fixed rate for specified periods of time (other than hours) such as days, weeks or months, the employee's hourly rate of compensation shall be the employee's most recent rate of compensation for a specified period of time (other than an hour), divided by the number of hours regularly scheduled for the performance of duties during such period of time. For purposes of the preceding sentence, in the case of an employee without a regular work schedule, the plan may provide for the calculation of the employee's hourly rate of compensation on the basis of a 40-hour workweek, an 8-hour workday, or may provide for such calculation on any reasonable basis which reflects the average hours worked by the employee over a representative period of time, provided that the basis so used is consistently applied with respect to all employees within the same job classifications, reasonably defined.

(C) In the case of an employee whose compensation is not determined on the basis of a fixed rate for specified periods of time, the employee's hourly rate of compensation shall be the lowest hourly rate of compensation paid to employees in the same job classification as that of the employee or, if no

employees in the same job classification have an hourly rate, the minimum wage as established from time to time under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(iii) *Examples.* The following examples illustrate the rules in paragraph (b)(2) of this section without regard to paragraphs (b)(1) and (3).

(A) As a result of an injury, an employee is incapacitated for 5 weeks. A lump sum payment of \$500 is made to the employee with respect to the injury under a disability insurance plan maintained by the employee's employer. At the time of the injury, the employee's rate of pay was \$3.00 per hour. The employee must, therefore, be credited with 167 hours of service (\$500 divided by \$3.00 per hour).

(B) Same facts as in Example (A), above, except that at the time of the injury, the employee's rate of pay was \$160 per week and the employee has a regular work schedule of 40 hours per week. The employee's hourly rate of compensation is, therefore, \$4.00 per hour (\$160 per week divided by 40 hours per week) and the employee must be credited with 125 hours of service for the period of absence (\$500 divided by \$4.00 per hour).

(C) An employee is paid at an hourly rate of \$3.00 per hour and works a regular schedule of 40 hours per week. The employee is disabled for 26 weeks during a computation period. For the first 12 weeks of disability, the employee is paid his normal weekly earnings of \$120 per week by the employer. Thereupon, a lump-sum disability payment of \$1000 is made to the employee under a disability insurance plan maintained by the employer. Under paragraph (a)(3)(i) of this section, the employee is credited with 501 hours of service for the period of disability (lesser of 501 hours—the maximum number of hours required to be credited for a period of absence—or the sum of 12 weeks multiplied by 40 hours per week plus \$1000 divided by \$3.00 per hour).

(3) *Rule against double credit.* (i) Notwithstanding paragraphs (b)(1) and (2) of this section, an employee is not required to be credited on account of a period during which no duties are performed with a number of hours of service which is greater than the num-

ber of hours regularly scheduled for the performance of duties during such period. For purposes of applying the preceding sentence in the case of an employee without a regular work schedule, a plan may provide for the calculation of the number of hours of service to be credited to the employee for a period during which no duties are performed on the basis of a 40-hour workweek or an 8-hour workday, or may provide for such calculation on any reasonable basis which reflects the average hours worked by the employee, or by other employees in the same job classification, over a representative period of time, provided that the basis so used is consistently applied with respect to all employees within the same job classifications, reasonably defined.

(ii) *Examples.* (A) Employee A has a regular 40-hour workweek. Each year Employee A is entitled to pay for a two-week vacation, in addition to receiving normal wages for all hours worked, regardless of whether A actually takes a vacation and regardless of the duration of his vacation. The vacation payments are, therefore, calculated on the basis of units of time (weeks). In computation period I, A takes no vacation but receives vacation pay. A is entitled to no credit for hours of service for the vacation payment made in computation period I because the payment was not made on account of a period during which no duties were performed. In computation period II, A takes a vacation of one week in duration, although receiving pay for a two-week vacation. A is entitled to be credited with 40 hours of service for his one-week vacation in computation period II even though paid for two weeks of vacation. In computation period III, A takes a vacation for a period lasting more than 2 weeks. A is entitled to be credited with 80 hours of service for his vacation in computation period III (40 hours per week multiplied by 2 weeks) even though the vacation lasted more than 2 weeks.

(B) Employee B has no regular work schedule. As a result of an injury, B is incapacitated for 1 day. A lump-sum payment of \$500 is made to A with respect to the injury under an insurance program maintained by the employer.

A pension plan maintained by the employer provides for the calculation of the number of hours of service to be credited to an employee without a regular work schedule on the basis of an 8-hour day. A is therefore required to be credited with no more than 8 hours for the day during which he was incapacitated, even though A's rate of pay immediately before the injury was \$3.00 per hour.

(c) *Crediting of hours of service to computation periods.* (1) Except as provided in paragraph (c)(4) of this section, hours of service described in paragraph (a)(1) of this section shall be credited to the computation period in which the duties are performed.

(2) Except as provided in paragraph (c)(4) of this section, hours of service described in paragraph (a)(2) of this section shall be credited as follows:

(i) Hours of service credited to an employee on account of a payment which is calculated on the basis of units of time, such as hours, days, weeks or months, shall be credited to the computation period or computation periods in which the period during which no duties are performed occurs, beginning with the first unit of time to which the payment relates.

(ii) Hours of service credited to an employee by reason of a payment which is not calculated on the basis of units of time shall be credited to the computation period in which the period during which no duties are performed occurs, or if the period during which no duties are performed extends beyond one computation period, such hours of service shall be allocated between not more than the first two computation periods on any reasonable basis which is consistently applied with respect to all employees within the same job classifications, reasonably defined.

(3) Except as provided in paragraph (c)(4) of this section, hours of service described in paragraph (a)(3) of this section shall be credited to the computation period or periods to which the award or agreement for back pay pertains, rather than to the computation period in which the award, agreement or payment is made.

(4) In the case of hours of service to be credited to an employee in connection with a period of no more than 31

days which extends beyond one computation period, all such hours of service may be credited to the first computation period or the second computation period. Crediting of hours of service under this paragraph must be done consistently with respect to all employees within the same job classifications, reasonably defined.

(5) *Examples.* The following examples are intended to illustrate paragraph (c)(4) of this section.

(i) An employer maintaining a plan pays employees on a bi-weekly basis. The plan designates the calendar year as the vesting computation period. The employer adopts the practice of crediting hours of service for the performance of duties during a bi-weekly payroll period to the vesting computation period in which the payroll period ends. Thus, when a payroll period ends on January 7, 1978, all hours of service to be credited to employees for the performance of duties during that payroll period are credited to the vesting computation period beginning on January 1, 1978. This practice is consistent with paragraph (c)(4) of this section, even though some hours of service credited to the computation period beginning on January 1, 1978, are attributable to duties performed during the previous vesting computation period.

(ii) An employer maintains a sick leave policy under which an employee is entitled to a certain number of hours of sick leave each year, on account of which the employee is paid his or her normal rate of compensation. An employee with a work schedule of 8 hours per day, 5 days per week, is sick from December 26, 1977 through January 4, 1978. Under the employer's sick leave policy, the employee is entitled to compensation for the entire period. A plan maintained by the employer establishes a calendar-year vesting computation period. The period from December 26, 1977 through December 31, 1977 includes 5 working days; the period from January 1, 1978 through January 4, 1978 includes 3 working days. Unless the plan adopts the alternative method for crediting service under paragraph (c)(4) of this section (illustrated in Example (iii), below) for the period of paid sick leave, the plan, pursuant to paragraph (c)(2)(i) of this section, must

credit the employee with 40 hours of service in the 1977 vesting computation period (5 days multiplied by 8 hours per day) and 24 hours of service in the 1978 vesting computation period (3 days multiplied by 8 hours per day).

(iii) Same facts as in Example (ii), above, except that the plan adopts the practice of crediting hours of service for sick leave and other periods of compensated absences to the vesting computation period in which the employer's bi-weekly payroll period ends. The employee returns to work on January 5, 1978 and works for 2 days. For the 2-week payroll period ending on January 8, 1978, the employee may be credited with 80 hours of service in the 1978 vesting computation period (64 hours of service for the paid sick leave and 16 hours of service for the 2 days during which duties were performed).

(d) *Other Federal law.* Nothing in this section shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States or any rule or regulation issued under any such law. Thus, for example, nothing in this section shall be construed as denying an employee credit for an "hour of service" if credit is required by separate Federal law. Furthermore, the nature and extent of such credit shall be determined under such law.

(e) *Additional examples.* (1) During a computation period, an employee was paid for working 38¼ hours a week for 45 weeks. During the remaining 7 weeks of the computation period the employee was not employed by this employer. The employee completed 1,721¼ hours of service (45 weeks worked multiplied by 38¼ hours per week). The employer may also round up hours at the end of the computation period or more frequently. Thus, this employee could be credited with 1,722 hours of service (or, if the employer rounded up at the end of each week, 39 hours of service per week, resulting in credit for 1,755 hours of service).

(2) During a computation period, an employee was paid for a workweek of 40 hours per week for 40 weeks and, including overtime, for working 50 hours per week for 8 weeks. The employee completed 2,000 hours of service (40 weeks multiplied by 40 hours per week,

plus 8 weeks worked multiplied by 50 hours per week).

(3) During a computation period an employee was paid for working 2 regularly scheduled 40-hour weeks and then became disabled. The employee was disabled through the remainder of the computation period and the following computation period. Throughout the period of disability, payments were made to the employee as follows: For the first month of the period of disability, the employer continued to pay the employee the employee's normal compensation at the same rate as before the disability occurred; thereupon, under the employer's disability insurance policy, payments were made to the employee in amounts equal to 80 percent of the employee's compensation before the disability. For the first computation period the employee is credited with 80 hours of service for the performance of duties (2 weeks multiplied by 40 hours per week) and 501 hours of service for the period of disability (the lesser of 501 hours of service or 50 weeks multiplied by 40 hours per week), or a total of 581 hours of service; for the second computation period the employee is credited with no hours of service because, under paragraph (a)(2)(i) of this section, the maximum of 501 hours of service has been credited for the period of disability in the first computation period.

(4) An employee has a regularly scheduled 5-day, 40-hour week. During a computation period the employee works for the first week, spends the second week on a paid vacation, returns to work for an hour and is then disabled for the remainder of the computation period. Payments under a disability plan maintained by the employer are made to the employee on account of the period of disability. The employee is credited with 582 hours of service for the computation period (40 hours for the period of paid vacation; 41 hours for the performance of duties; 501 hours for the period of disability).

(5) Same facts as in Example (4), above, except that the employee's period of disability begins before the employee returns from vacation to the performance of duties. The employee is credited with only 541 hours of service,

because the paid vacation and the disability together constitute a single, continuous period during which no duties were performed and, therefore, under paragraph (a)(2)(i) of this section, no more than 501 hours of service are required to be credited for such period.

(6) During a computation period, an employee worked 40 hours a week for the first 2 weeks. The employee then began serving on active duty in the Armed Forces of the United States, which service occupied the remaining 50 weeks of the computation period. The employee would be credited with 80 hours (2 weeks worked multiplied by 40 hours) plus such credit as may be prescribed by separate Federal laws relating to military service. The nature and extent of the credit that the employee receives upon his return and the purpose for which such credit is given, e.g., the percentage of his or her accrued benefits derived from employer contributions which are nonforfeitable (or vested), will depend upon the interpretation of the Federal law governing veterans' reemployment rights.

(f) *Plan document.* A plan which credits service on the basis of hours of service must state in the plan document the definition of hours of service set forth in paragraph (a) of this section, but is not required to state the rules set forth in paragraph (b) and (c) of this section if they are incorporated by reference.

§ 2530.200b-3 Determination of service to be credited to employees.

(a) *General rule.* For the purpose of determining the hours of service which must be credited to an employee for a computation period, a plan shall determine hours of service from records of hours worked and hours for which payment is made or due or shall use an equivalency permitted under paragraph (d), (e) or (f) of this section to determine hours of service. Any records may be used to determine hours of service to be credited to employees under a plan, even though such records are maintained for other purposes, provided that they accurately reflect the actual number of hours of service with which an employee is required to be credited under § 2530.200b-2(a). Payroll

records, for example, may provide sufficiently accurate data to serve as a basis for determining hours of service. If, however, existing records do not accurately reflect the actual number of hours of service with which an employee is entitled to be credited, a plan must either develop and maintain adequate records or use one of the permitted equivalencies. A plan may in any case credit hours of service under any method which results in the crediting of no less than the actual number of hours of service required to be credited under § 2530.200b-2(a) to each employee in a computation period, even though such method may result in the crediting of hours of service in excess of the number of hours required to be credited under § 2530.200b-2. A plan is not required to prescribe in its documents which records are to be used to determine hours of service.

(b) *Determination of pre-effective date hours of service.* To the extent that a plan is required to determine hours of service completed before the effective date of part 2 of title I of the Act (see section 211 of the Act), the plan may use whatever records may be reasonably accessible to it and may make whatever calculations are necessary to determine the approximate number of hours of service completed before such effective date. For example, if a plan or an employer maintaining the plan has, or has access to, only the records of compensation of employees for the period before the effective date, it may derive the pre-effective date hours of service by using the hourly rate for the period or the hours customarily worked. If accessible records are insufficient to make an approximation of the number of pre-effective date hours of service for a particular employee or group of employees, the plan may make a reasonable estimate of the hours of service completed by such employee or employees during the particular period. For example, if records are available with respect to some employees, the plan may estimate the hours of other employees in the same job classification based on these records. A plan may use any of the equivalencies permitted under this section, or the elapsed time method of crediting service permitted under this

section, or the elapsed time method of crediting service permitted under § 2530.200b-9, to determine hours of service completed before the effective date of part 2 of title I of the Act.

(c) *Use of equivalencies for determining service to be credited to employees.* (1) The equivalencies permitted under paragraphs (d), (e) and (f) of this section are methods of determining service to be credited to employees during computation periods which are alternatives to the general rule for determining hours of service set forth in paragraph (a) of this section. The equivalencies are designed to enable a plan to determine the amount of service to be credited to an employee in a computation period on the basis of records which do not accurately reflect the actual number of hours of service required to be credited to the employee under § 2530.200b-2(a). However, the equivalencies may be used even if such records are maintained. Any equivalency used by a plan must be set forth in the document under which the plan is maintained.

(2) A plan may use different methods of crediting service, including equivalencies permitted under paragraphs (d), (e) and (f) of this section and the method of crediting service under the general rule set forth in § 2530.200b-2(a), for different classifications of employees covered under the plan or for different purposes, provided that such classifications are reasonable and are consistently applied. Thus, for example, a plan may provide that part-time employees are credited under the general method of crediting service set forth in § 2530.200b-2 and full-time employees are credited under a permissible equivalency. A classification, however, will not be deemed to be reasonable or consistently applied if such classification is designed with an intent to preclude an employee or employees from attaining statutory entitlement with respect to eligibility to participate, vesting or benefit accrual. For example, a classification applied so that any employee credited with less than 1,000 hours of service during a given 12-consecutive-month period would be considered part-time and subject to the general method of crediting service rather

than an equivalency would not be reasonable.

(3) Notwithstanding paragraphs (c)(1) and (2) of this section, the use of a permissible equivalency for some, but not all, purposes or the use of a permissible equivalency for some, but not all, employees may, under certain circumstances, result in discrimination prohibited under section 401a of the Code, even though it is permitted under this section.

(d) *Equivalencies based on working time*—(1) *Hours worked.* A plan may determine service to be credited to an employee on the basis of hours worked, as defined in paragraph (d)(3)(i) of this section, if 870 hours worked are treated as equivalent to 1,000 hours of service and 435 hours worked are treated as equivalent to 500 hours of service.

(2) *Regular time hours.* A plan may determine service to be credited to an employee on the basis of regular time hours, as defined in paragraph (d)(3)(ii) of this section, if 750 regular time hours are treated as equivalent to 1,000 hours of service and 375 regular time hours are treated as equivalent to 500 hours of service.

(3) For purposes of this section:

(i) The term “hours worked” shall mean hours of service described in § 2530.200b-2(a)(1), and hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an employer, to the extent that such award or agreement is intended to compensate an employee for periods during which the employee would have been engaged in the performance of duties for the employer.

(ii) The term “regular time hours” shall mean hours worked, except hours for which a premium rate is paid because such hours are in excess of the maximum workweek applicable to an employee under section 7(a) of the Fair Labor Standards Act of 1938, as amended, or because such hours are in excess of a bona fide standard workweek or workday.

(4) A plan determining service to be credited to an employee on the basis of hours worked or regular time hours shall credit hours worked or regular time hours, as the case may be, to computation periods in accordance with the rules for crediting hours of service

to computation periods set forth in § 2530.200b-2(c).

(5) *Examples.* (i) A defined benefit plan uses the equivalency based on hours worked permitted under paragraph (d)(1) of this section. The plan uses the same 12-consecutive-month period for the vesting and accrual computation periods. The plan credits a participant with each hour for which the participant is paid, or entitled to payment, for the performance of duties for the employer during a computation period (as well as each hour for which back pay is awarded or agreed to). During a vesting/accrual computation period Participant A is credited with 870 hours worked. A is credited with a year of service for purposes of vesting for the computation period and with at least a partial year of participation for purposes of accrual, as if A had been credited with 1000 hours of service during the computation period. During the same computation period Participant B is credited with 436 hours of service. B is not credited with a year of service for purposes of vesting or a partial year or participation for purposes of accrual for the computation period, but does not incur a one-year break in service for the computation period, as if B had been credited with 501 hours of service during the computation period.

(ii) A plan uses the equivalency based on regular time hours permitted under paragraph (d)(2) of this section. During a computation period a participant works 370 regular time hours and 20 overtime hours. The participant incurs a one-year break in service for the computation period because he has not been credited with 375 regular time hours in the computation period.

(e) *Equivalencies based on periods of employment.* (1) Except as provided in paragraphs (e)(4) and (6) of this section, a plan may determine the number of hours of service to be credited to employees in a computation period on the following bases:

(i) On the basis of days of employment, if an employee is credited with 10 hours of service for each day for which the employee would be required to be credited with at least one hour of service under § 2530.200b-2;

(ii) On the basis of weeks of employment, if an employee is credited with

45 hours of service for each week for which the employee would be required to be credited with at least one hour of service under § 2530.200b-2;

(iii) On the basis of semi-monthly payroll periods, if an employee is credited with 95 hours of service for each semi-monthly payroll period for which the employee would be required to be credited with at least one hour of service under § 2530.200b-2; or

(iv) On the basis of months of employment, if an employee is credited with 190 hours of service for each month for which the employee would be required to be credited with at least one hour of service under § 2530.200 b-2.

(2) Except as provided in paragraphs (e)(4) and (6) of this section, a plan may determine the number of hours of service to be credited to employees in a computation period on the basis of shifts if an employee is credited with the number of hours included in a shift for each shift for which the employee would be required to be credited with at least one hour of service under § 2530.200b-2. If a plan uses the equivalency based on shifts permitted under this paragraph, the times of the beginning and end of each shift used as a basis for the determination of service shall be set forth in a document referred to in the plan.

(3) *Examples.* The following examples illustrate the application of paragraphs (e)(1) and (2) of this section;

(i) A plan uses the equivalency based on weeks of employment permitted under paragraph (e)(1)(ii) of this section. An employee works for one hour on the first workday of a week and then takes leave without pay for the entire remainder of the week. The plan must credit the employee with 45 hours of service for the week.

(ii) A plan uses the equivalency based on weeks of employment permitted under paragraph (e)(1)(ii) of this section. An employee spends a week on vacation with pay. The plan must credit the employee with 45 hours of service for the week.

(iii) A plan uses the equivalency based on weeks of employment permitted under paragraph (e)(1)(ii) of this section. An employee spends two days of a week on vacation with pay and the

remainder of the week on leave without pay. The plan must credit the employee with 45 hours of service for the week.

(iv) A plan uses the equivalency based on weeks of employment permitted under paragraph (e)(1)(ii) of this section. An employee spends the entire week on leave without pay. The plan is not required to credit the employee with any hours of service for the week because no payment was made to the employee for the week of leave and, therefore, under § 2530.200b-2 no hours of service would be credited to the employee for the week of leave.

(v) The workday of an employer maintaining a plan is scheduled in shifts. Ordinarily, each shift is 6 hours in duration. At certain times, however, the employer schedules 8-hour shifts in order to meet increased demand. Such shifts are described in a collective bargaining agreement referred to in the plan documents. The plan must credit an employee with 6 hours of service for each 6-hour shift for which the employee would be credited with one hour of service under § 2530.200b-2, and with 8 hours of service for each such 8-hour shift.

(vi) An employer's workday is divided into three 8-hour shifts, each employee generally working 5 shifts per week. A plan maintained by the employer uses the equivalency based on shifts permitted under paragraph (e)(2) of this section. An employee is on vacation with pay for 2 weeks, during which, in the ordinary course of his work schedule, he would have worked 10 shifts. The employee must be credited with 80 hours of service for the vacation (10 shifts multiplied by 8 hours per shift).

(vii) An employer's workday is divided into three 8-hour shifts, each employee generally working 1 shift per workday. A plan maintained by the employer uses the equivalency based on shifts permitted under paragraph (e)(2) of this section. On a certain day, an employee works his normal 8-hour shift and an hour during the following shift. In addition to 8 hours service for the first shift, the employee must be credited with 8 hours of service for the following shift, since he would be entitled to be credited with at least one

hour of service for the second shift under § 2530.200b-2.

(viii) A plan uses the equivalency based on days permitted under paragraph (e)(1)(i) of this section. During a computation period an employee spends 2 weeks on vacation with pay. In the ordinary course of the employee's regular work schedule, the employee would be engaged in the performance of duties for 10 days during the 2-week vacation period. Under § 2530.200b-2, the employee would be credited with at least one hour of service for each of the 10 days during the 2-week vacation for which the employee would ordinarily be engaged in the performance of duties. Under paragraph (e)(4) of this section, the employee is credited with 100 hours of service for the 2-week vacation (10 days multiplied by 10 hours of service per day).

(4) For purposes of this paragraph, in the case of a payment described in § 2530.200b-2(b)(2) (relating to payments not calculated on the basis of units of time), a plan using an equivalency based on units of time permitted under this paragraph shall credit the employee with the number of hours of service determined under paragraph (2) of § 2530.200b-2(b), and, to the extent applicable, paragraph (e)(3), containing the rule against double crediting, of § 2530.200b-2(b). For example, if an employee with a regular work schedule of 40 hours per week paid at a rate of \$3.00 per hour is incapacitated for a period of 4 weeks and receives a lump sum payment of \$500 for his incapacity, the employee must be credited with 160 hours of service for the period of incapacity, regardless of whether the plan uses an equivalency permitted under this paragraph (see example at § 2530.200b-2(b)(2)(iii)(A)). If, however, the employee is incapacitated for only 3 weeks, under § 2530.200b-2(b)(3) the employee is not required to be credited with more than 120 hours of service (lesser of 167 hours of service determined under the preceding sentence or 3 weeks multiplied by 40 hours per week).

(5) For purposes of this paragraph, in the case of a payment to an employee calculated on the basis of units of time which are greater than the periods of employment used by a plan as a basis

for determining service to be credited to the employee under this paragraph, the plan shall credit the employee with the number of periods of employment which, in the course of the employee's regular work schedule, would be included in the unit or units of time on the basis of which the payment is calculated. For example, a plan uses the equivalency based on days permitted under paragraph (e)(1)(i) of this section. During a computation period an employee spends 2 weeks on vacation with pay. In the ordinary course of the employee's regular work schedule, the employee would be engaged in the performance of duties for 10 days during the 2-week vacation period. Under § 2530.200b-2, the employee would be credited with at least one hour of service for each of the 10 days during the 2-week vacation for which the employee would ordinarily be engaged in the performance of duties. Under this paragraph the employee is credited with 100 hours of service for the 2-week vacation (10 days multiplied by 10 hours of service per day). If, however, the employee, although paid for a 2-week vacation, spends only one week on vacation, under § 2530.200b-2(b)(3) the employee is not required to be credited with more than 50 hours of service (5 days multiplied by 10 hours per day).

(6) For purposes of this paragraph, in the case of periods of time used as a basis for determining service to be credited to an employee which extend into two computation periods, the plan may credit all hours of service (or other units of service) credited for such a period to the first computation period or the second computation period, or may allocate such hours of service (or other units of service) between the two computation periods on a pro rata basis. Crediting of service under this paragraph must be done consistently with respect to all employees within the same job classifications, reasonably defined.

(7) A plan may combine an equivalency based on working time permitted under paragraph (d) of this section (*i.e.*, hours worked or regular time hours) with an equivalency based on periods of employment permitted under this paragraph if the following conditions are met:

(i) The plan credits an employee with the number of hours worked or regular time hours, as the case may be, equal to the number of hours of service which would be credited to the employee under paragraphs (e)(1) and (2) of this section, for each period of employment for which the employee would be credited with one hour worked or one regular time hour; and

(ii) The plan treats hours worked and regular time hours in the manner prescribed under paragraphs (d)(1) and (2) of this section.

(8) *Example.* The following example illustrates the application of paragraph (e)(7) of this section. A plan uses the equivalency based on weeks of employment permitted under paragraph (e)(1)(ii) of this section in conjunction with the equivalency based on hours worked permitted under paragraph (d)(1) of this section, as provided in paragraph (e)(7) of this section. During a vesting computation period an employee is paid for the performance of duties for at least 1 hour in each of the first 20 weeks of the computation period and spends the next 2 weeks on a paid vacation. The employee thereupon terminates employment performing no further duties for the employer, and receiving no further compensation in the computation period. The employee is therefore credited with 900 hours worked for the vesting computation period (20 weeks multiplied by 45 hours per week), receiving no credit for the two weeks of paid vacation. The employee is credited with a year of service for the vesting computation period because he has been credited with more than 870 hours for the computation period.

(f) *Equivalencies based on earnings.* (1) In the case of an employee whose compensation is determined on the basis of an hourly rate, a plan may determine the number of hours to be credited the employee in a computation period on the basis of earnings, if:

(i) The employee is credited with the number of hours equal to the total of the employee's earnings from time to time during the computation period divided by the employee's hourly rate as

in effect at such times during the computation period, or equal to the employee's total earnings for the performance of duties during the computation period divided by the employee's lowest hourly rate of compensation during the computation period, or by the lowest hourly rate of compensation payable to an employee in the same, or a similar job classification, reasonably defined; and

(ii) 870 hours credited under paragraph (f)(1)(i) of this section are treated as equivalent to 1,000 hours of service, and 435 hours credited under paragraph (f)(1)(i) of this section are treated as equivalent to 500 hours of service. For purposes of this paragraph (f)(1), a plan may divide earnings at premium rates for overtime by the employee's hourly rate for overtime, rather than the regular time hourly rate.

(2) In the case of an employee whose compensation is determined on a basis other than an hourly rate, a plan may determine the number of hours to be credited to the employee in a computation period on the basis of earnings if:

(i) The employee is credited with the number of hours equal to the employee's total earnings for the performance of duties during the computation period divided by the employee's lowest hourly rate of compensation during the computation period, determined under paragraph (f)(3) of this section; and

(ii) 750 hours credited under paragraph (f)(2)(i) of this section are treated as equivalent to 1,000 hours of service, and 375 hours credited under paragraph (f)(2)(i) of this section are treated as equivalent to 500 hours of service.

(3) For purposes of paragraph (f)(2) of this section, an employee's hourly rate of compensation shall be determined as follows:

(i) In the case of an employee whose compensation is determined on the basis of a fixed rate for a specified period of time (other than an hour) such as a day, week or month, the employee's hourly rate of compensation shall be the employee's lowest rate of compensation during a computation period for such specified period of time divided by the number of hours regularly scheduled for the performance of duties during such period of time. For purposes of the preceding sentence, in the

case of an employee without a regular work schedule, the plan may provide for the calculation of the employee's hourly rate of compensation on the basis of a 40-hour workweek or an 8-hour workday, or may provide for such calculation on any reasonable basis which reflects the average hours worked by the employee over a representative period of time, provided that the basis so used is consistently applied to all employees within the same job classifications, reasonably defined.

(ii) In the case of an employee whose compensation is not determined on the basis of a fixed rate for a specified period of time, the employee's hourly rate of compensation shall be the lowest hourly rate of compensation payable to employees in the same job classification as the employee, or, if no employees in the same job classification have an hourly rate, the minimum wage as established from time to time under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(4) *Examples.* (i) In a particular job classification employees' wages range from \$3.00 per hour to \$4.00 per hour. To determine the number of hours to be credited to an employee in that job classification who is compensated at a rate of \$4.00 per hour, a plan may divide the employee's total earnings during the computation period for the performance of duties either by \$3.00 per hour (the lowest hourly rate of compensation in the job classification) or by \$4.00 per hour (the employee's own hourly rate of compensation).

(ii) An hourly employee's total earnings for the performance of duties during a vesting computation period amount to \$4,350. During that calendar year, the employee's lowest hourly rate of compensation was \$5.00 per hour. The plan may determine the number of hours to be credited to the employee for that vesting computation period by dividing \$4,350 by \$5.00 per hour. The employee is credited with 870 hours for the vesting computation period and is, therefore, credited with a year of service for purposes of vesting.

(iii) During the first 3 months of a vesting computation period an hourly employee is paid at a rate of \$3.00 per

hour and earns \$675 for the performance of duties; during the next 6 months, the employee is paid at a rate of \$3.50 per hour and earns \$1,575 for the performance of duties; during the final 3 months the employee is paid at a rate of \$3.60 per hour and earns \$810 for the performance of duties. The plan may determine the number of hours to be credited to the employee in the computation period under the equivalency set forth in paragraph (f)(1) of this section either (A) by dividing the employee's earnings for each period during which the employee was paid at a separate rate (\$675 divided by \$3.00 per hour equals 225 hours; \$1,575 divided by \$3.50 per hour equals 450 hours; \$810 divided by \$3.60 per hour equals 225 hours) and adding the hours so obtained (900 hours), or (B) by dividing the employee's total compensation for the vesting computation period by the employee's lowest hourly rate during the computation period (\$3,020 divided by \$3.00 per hour equals 1,009 $\frac{2}{3}$ hours). The plan may also divide the employee's total compensation during the computation period by the lowest hourly rate payable to an employee in the same, or a similar, job classification.

(iv) During a plan's computation period an hourly employee's total earnings for the performance of duties consist of \$7,500 at a basic rate of \$5.00 per hour and \$750 at an overtime rate of \$7.50 per hour for hours worked in excess of 40 in a week. If the plan uses the equivalency permitted under paragraph (f)(1) of this section, the plan may adjust for the overtime rate in calculating the number of hours to be credited to the employee. Thus, the plan may calculate the number of hours to be credited to the employee by adding the employee's earnings at the basic rate divided by the basic rate and the employee's earnings at the overtime rate divided by the overtime rate (\$7,500 divided by \$5.00 per hour, plus \$750 divided by \$7.50 per hour, or 1,500 hours plus 100 hours), resulting in credit for 1,600 hours for the computation period.

(v) During a plan's vesting computation period an employee's lowest weekly rate of compensation is \$400 per week. The employee has a regular work schedule of 40 hours per week. The em-

ployee's lowest hourly rate during the vesting computation period is, therefore, \$10 per hour (\$400 per week divided by 40 hours per week). During the vesting computation period, the employee receives a total of \$7,500 for the performance of duties. The plan determines the number of regular time hours to be credited to the employee for the computation period by dividing \$7,500 by \$10 per hour. The employee is credited with 750 hours for the computation period and is, therefore, credited with a year of service for purposes of vesting.

§ 2530.200b-4 One-year break in service.

(a) *Computation period.* (1) Under sections 202(b) and 203(b)(3) of the Act and sections 410(a)(5) and 411(a)(6) of the Code, a plan may provide that an employee incurs a one-year break in service for a computation period or periods if the employee fails to complete more than 500 hours of service or, in the case of any maritime industry, 62 days of service in such period or periods.

(2) For purposes of section 202(b) of the Act and section 410(a)(5) of the Code, relating to one-year breaks in service for eligibility to participate, in determining whether an employee incurs a one-year break in service, a plan shall use the eligibility computation period designated under § 2530.202-2(b) for measuring years of service after the initial eligibility computation period.

(3) For purposes of section 203(b)(3) of the Act and section 411(a)(6) of the Code, relating to breaks in service for purposes of vesting, in determining whether an employee incurs a one-year break in service, a plan shall use the vesting computation period designated under § 2530.203-2(a).

(4) For rules regarding service which is not required to be taken into account for purposes of benefit accrual, see § 2530.204-1(b)(1).

(b) *Service following a break in service.* (1) For purposes of section 202(b)(3) of the Act and section 410(a)(5)(C) of the Code (relating to completion of a year of service for eligibility to participate after a one-year break in service), the following rules shall be applied in measuring completion of a year of

service upon an employee's return after a one-year break in service:

(i) In the case of a plan which, after the initial eligibility computation period, measures years of service for purposes of eligibility to participate on the basis of eligibility computation periods beginning on anniversaries of an employee's employment commencement date, as permitted under § 2530.202-2(b)(1), the plan shall use the 12-consecutive-month period beginning on an employee's reemployment commencement date (as defined in paragraphs (b)(1)(iii) and (iv) of this section) and, where necessary, subsequent 12-consecutive-month periods beginning on anniversaries of the reemployment commencement date.

(ii) In the case of a plan which, after the initial eligibility computation period, measures years of service for eligibility to participate on the basis of plan years beginning with the plan year which includes the first anniversary of the initial eligibility computation period, as permitted under § 2530.202-2(b)(2), the plan shall use the 12-consecutive-month period beginning on an employee's reemployment commencement date (as defined in paragraphs (b)(1)(iii) and (iv) of this section) and, where necessary, plan years beginning with the plan year which includes the first anniversary of the employee's reemployment commencement date.

(iii) Except as provided in paragraph (b)(1)(iv) of this section, an employee's reemployment commencement date shall be the first day on which the employee is entitled to be credited with an hour of service described in § 2530.200b-2(a)(1) after the first eligibility computation period in which the employee incurs a one-year break in service following an eligibility computation period in which the employee is credited with more than 500 hours of service.

(iv) In the case of an employee who is credited with no hours of service in an eligibility computation period beginning after the employee's reemployment commencement date established under paragraph (b)(1)(iii) of this section, the employee shall be treated as having a new reemployment commencement date as of the first day on which the employee is entitled to be

credited with an hour of service described in § 2530.200b-2(a)(1) after such eligibility computation period.

(2) For purposes of section 203(b)(3)(B) of the Act and section 411(a)(6)(B) of the Code (relating to the completion of a year of service for vesting following a one-year break in service), in measuring completion of a year of service upon an employee's return after a one-year break in service, a plan shall use the vesting computation period designated under § 2530.203-2. In the case of a plan which designates a separate vesting computation period for each employee (rather than one vesting computation period for all employees), when an employee who has incurred a one-year break in service later completes an initial hour of service, the plan may change the employee's vesting computation period to a 12-consecutive-month period beginning on the day on which such initial hour of service is completed, provided that the plan follows the rules for changing the vesting computation period set forth in § 2530.203-2(c)(1). Specifically, such a plan must ensure that as a result of the change of the vesting computation period of an employee who has incurred a one-year break in service to the 12-month period beginning on the first day on which the employee later completes an initial hour of service, the employee's vested percentage of the accrued benefit derived from employer contributions will not be less on any date after the change than such non-forfeitable percentage would be in the absence of the change. As under § 2530.203-2(c)(1), the plan will be deemed to satisfy the requirement of that paragraph if, in the case of an employee who has incurred a one-year break in service, the vesting computation period beginning on the day on which the employee completes an hour of service after the one-year break in service begins before the end of the last vesting computation period established before the change of vesting computation periods and, if the employee is credited with 1000 hours of service in both such vesting computation periods, the employee is credited with 2 years of service for purposes of vesting.

(3) For purposes of section 203(b)(3)(B) of the Act and section 411(a)(6)(B) of

the Code (relating to the completion of a year of service for vesting following a one-year break in service), in measuring completion of a year of service upon an employee's return after a one-year break in service, a plan shall use the vesting computation period designated under § 2530.203-2. In the case of a plan which designates a separate vesting computation period for each employee (rather than one vesting computation period for all employees), when an employee who has incurred a one-year break in service later completes an initial hour of service, the plan may change the employee's vesting computation period to a 12-consecutive-month period beginning on the day on which such initial hour of service is completed, provided that the plan follows the rules for changing the vesting computation period set forth in § 2530.203-2(c)(1).

(4) *Examples.* (i) Employer X maintains a pension plan. The plan uses a calendar year vesting computation period and plan year. As conditions for participation, the plan requires that an employee of X complete one year of service and attain age 25, and, in accordance with § 2530.202-2(b)(2), provides that after the initial eligibility computation period, plan years will be used as eligibility computation periods, beginning with the plan year which includes the first anniversary of an employee's employment commencement date. Thus, under paragraph (a)(2) of this section, the plan must use plan years in measuring one-year breaks in service for eligibility to participate. The plan provides that an employee acquires a nonforfeitable right to 100 percent of the accrued benefit derived from employer contributions upon completion of 10 years of service. Under the plan, for purposes of vesting, years of service completed before an employee attains age 22 are not taken into account. The plan also provides that if an employee has incurred a one-year break in service, in computing the employee's period of service for eligibility to participate, years of service before such break will not be taken into account until the employee has completed a year of service with X after the employee's return. The plan further provides that in the case of an

employee who has no vested right to an accrued benefit derived from employer contributions, years of service for purposes of eligibility to participate or vesting before a one-year break in service for eligibility or vesting (as the case may be) shall not be required to be taken into account if the number of consecutive one-year breaks in service equals or exceeds the aggregate number of such years of service before such consecutive one-year breaks in service.

(A) Employee A commences employment with X on January 1, 1976 at age 30 and completes a year of service for eligibility to participate and vesting in both the 1976 and 1977 computation periods. A becomes a participant in the plan on January 1, 1977. A terminates employment with X on November 3, 1977, after completing 1,000 hours of service; completes no hours of service in 1978, incurring a one-year break in service; and is reemployed by X on June 1, 1979. A completes 800 hours of service during the remainder of 1979 and 600 hours of service from January 1, 1980 through May 31, 1980. Under paragraph (b)(1)(iii) of this section, A's reemployment commencement date is June 1, 1979. By June 1, 1980, A has completed a year of service during the eligibility computation period following his return, and receives credit for his pre-break service to the extent required under section 202 of the Act and section 410 of the Code and the regulations thereunder. The plan is not, however, required to credit A with a year of service for vesting during 1979 because he failed to complete 1,000 hours of service during that vesting computation period. If A completes 400 or more hours of service from June 1, 1980 to December 31, 1980, then A will be credited with one year of service for vesting purposes for the 1980 vesting computation period.

(B) Employee B was born on February 22, 1955 and commenced employment with Employer X on July 1, 1975. B is credited with a year of service for eligibility to participate in the plan for the eligibility computation period beginning on his employment commencement date (July 1, 1975) and a year of service for eligibility and vesting for the 1976 and 1977 plan years. As of the end of the 1977 plan year, B is credited

with 3 years of service for purposes of eligibility to participate, but only one year of service for purposes of vesting. Not having attained age 25, however, B is not admitted to participation in the plan upon completion of his first year of service with X. In the 1978 plan year, B fails to be credited with 500 hours of service, thereby incurring a one-year break in service. As a result of B's one-year break in service in the 1978 plan year, the year of service for vesting which was earlier credited to B for the 1977 plan year is disregarded because the one-year break in service equals the one year of service credited to B before the one-year break in service. After the end of the 1978 plan year, B does not perform an hour of service with X until February 3, 1979. February 3, 1979, therefore, is B's reemployment commencement date under paragraph (b)(1)(i) of this section. B fails to be credited with 1,000 hours of service in the first eligibility computation period beginning on February 3, 1979, and also for the vesting computation period beginning January 1, 1979. Because, in accordance with § 2530.202-2(b)(2), the plan provides that after the initial eligibility computation period, plan years will be used as eligibility computation periods, under paragraph (b)(1)(ii) of this section the plan must provide that, in measuring completion of a year of service for eligibility to participate after a one-year break in service, plan years beginning with the plan year which includes an employee's reemployment commencement date will be used. B is credited with 1,000 hours of service for the plan year beginning on January 1, 1980 and is therefore credited with a year of service for the 1980 plan year. Under section 202(b)(3) of the Act and section 410(a)(5)(C) of the Code, as a consequence of B's completion of a year of service in the 1980 plan year, B's service before his one-year break in service in the 1978 plan year must be taken into account for eligibility purposes. As conditions of participation, the plan requires that an employee attain age 25 and complete one year of service. Upon his completion of a year of service for the 1980 plan year, B is deemed to have met the plan's participation requirements as of February 22, 1980, his twenty-fifth

birthday, because the year of service completed by B in B's eligibility computation period beginning on January 1, 1976 is taken into account for eligibility purposes.

(ii) Employer Y maintains a defined benefit pension plan. The plan provides that an employee acquires a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions upon completion of 10 years of service. As conditions for participation, the plan requires that an employee of Y complete one year of service and provides that if an employee has incurred a one-year break in service, in computing the employee's period of service for eligibility to participate, years of service before such break will not be taken into account until the employee has completed a year of service with Y after the employee's return. In accordance with § 2530.202-2(b)(1), the plan provides that after the initial eligibility computation period, eligibility computation periods beginning on anniversaries of an employee's employment commencement date will be used. Thus, under paragraph (a)(1) of this section, the plan must use computation periods beginning on anniversaries of the employee's employment commencement date in measuring one-year breaks in service. Employee C's employment commencement date with Y is February 1, 1975. C is credited with a year of service for eligibility to participate in the eligibility computation period beginning on C's employment commencement date and meets the plan's eligibility requirements as of February 1, 1976. In accordance with the provisions of the plan, C commences participation in the plan as of July 1, 1976. C is thereafter credited with a year of service for eligibility to participate in each of the eligibility computation periods beginning on anniversaries of C's employment commencement date (February 1) in 1976, 1977, 1978 and 1979. Thus, as of February 1, 1980, C is credited with 5 years of service for eligibility to participate. In the eligibility computation period beginning on February 1, 1980, C fails to be credited with more than 500 hours of service and therefore incurs a one-year break in service. In the eligibility computation

period beginning on February 1, 1981, C is not credited with an hour of service for the performance of duties until March 1, 1981. Under paragraph (b)(1)(iii) of this section, March 1, 1981 is C's reemployment commencement date. C terminates employment with Y on May 1, 1981 and fails to be credited with 1000 hours of service in the 12-consecutive-month period beginning on March 1, 1981, or with more than 500 hours of service in the eligibility computation period beginning on February 1, 1981, thereby incurring a second one-year break in service for eligibility to participate. C is credited with no hours of service in the eligibility computation period beginning on February 1, 1982, thereby incurring a third one-year break in service for eligibility to participate, and is likewise credited with no hours of service in the 12-consecutive-month period beginning on March 1, 1982, the anniversary of B's reemployment commencement date. Under paragraph (b)(1)(iv) of this section, C must therefore be treated as having a new reemployment commencement date as of the first day following the close of the eligibility computation period beginning on February 1, 1982. On January 1, 1984 (before the end of the eligibility computation period beginning February 1, 1983) C is rehired by Y and is credited with an hour of service for the performance of duties. C is therefore treated as having a new reemployment commencement date January 1, 1984. C fails to be credited with more than 500 hours of service in the eligibility computation period beginning on February 1, 1983, thereby incurring a fourth one-year break in service, and fails to be credited with 1000 hours of service in the 12-consecutive-month period beginning on March 1, 1983, the anniversary of C's original reemployment commencement date. However, in the 12-consecutive-month period beginning on January 1, 1984, C is credited with 1000 hours of service, thus meeting the plan's requirement that an employee who has incurred a one-year break in service for eligibility to participate must complete a year of service upon the employee's return in order for years of service before the one-year break in service to be taken into account for purposes of eligibility. Be-

cause C's years of service completed before C's first one-year break in service must be taken into account under section 202(b) of the Act and section 410(b)(5) of the Code for purposes of eligibility to participate, under § 2530.204-2(a)(2) the period beginning on July 1, 1976 (the earliest date on which C was a participant) and extending until January 31, 1980 (the last day before C's first one-year break in service) must be taken into account for purposes of benefit accrual.

(c) *Prior service for eligibility to participate.* For rules relating to computing service preceding a break in service for the purpose of eligibility to participate in the plan, see § 2530.202-2(c).

(d) *Prior service for vesting.* For rules relating to computing service preceding a break in service for the purpose of credit toward vesting, see § 2530.203-2(d).

§ 2530.200b-5 Seasonal industries. [Reserved]

§ 2530.200b-6 Maritime industry.

(a) *General.* Sections 202(a)(3)(D), 203(b)(2)(D) and 204(b)(3)(E) of the Act and sections 410(a)(3)(D) and 411(a)(5)(D) and (b)(3)(E) of the Code contain special provisions applicable to the maritime industry. In general, those provisions permit statutory standards otherwise expressed in terms of 1,000 hours of service to be applied to employees in the maritime industry as if such standards were expressed in terms of 125 days of service. A plan covering employees in the maritime industry may nevertheless credit service to such employees on the basis of hours of service, as prescribed in § 2530.200b-2, including the use of any equivalency permitted under § 2530.200b-3, or may credit service to such employees on the basis of elapsed time, as permitted under § 2530.200b-9.

(b) *Definition.* For purposes of sections 202, 203, and 204 of the Act and sections 410 and 411 of the Code, the maritime industry is that industry in which employees perform duties on board commercial, exploratory, service or other vessels moving on the high seas, inland waterways, Great Lakes,

coastal zones, harbors and noncontiguous areas, or on offshore ports, platforms or other similar sites.

(c) *Computation periods.* For employees in the maritime industry, computation periods shall be established as for employees in any other industry.

(d) *Year of service.* To the extent that a plan covers employees engaged in the maritime industry, and credits service for such employees on the basis of days of service, such employees who are credited with 125 days of service in the applicable computation period must be credited with a year of service. In the case of a plan covering both employees engaged in the maritime industry and employees not engaged in the maritime industry, service of employees not engaged in the maritime industry shall not be determined on the basis of days of service.

(e) *Year of participation for benefit accrual.* A plan covering employees engaged in the maritime industry may determine such an employee's period of service for purposes of benefit accrual on any basis permitted under §§ 2530.204-2 and 2530.204-3. For purposes of § 2530.204-2(c) (relating to partial years of participation), in the case of an employee engaged in the maritime industry who is credited by the plan on the basis of days of service and whose service is not less than 125 days of service during an accrual computation period, the calculation of such employee's period of service for purposes of benefit accrual shall be treated as not made on a reasonable and consistent basis if service during such computation period is not taken into account. Thus, the employee must be credited with at least a partial year of participation (but not necessarily a full year of participation) for that accrual computation period, in accordance with § 2530.204-2(c).

(f) *Employment commencement date.* For purposes of § 2530.200b-4 (relating to breaks in service) and § 2530.202-2 (relating to eligibility computation periods):

(1) The employment commencement date of an employee engaged in the maritime industry who is credited by the plan on the basis of days of service shall be the first day for which the employee is entitled to be credited with a

day of service described in § 2530.200b-7(a)(1).

(2)(i) Except as provided in paragraph (f)(2)(ii) of this section, the reemployment commencement date of an employee engaged in the maritime industry shall be the first day for which the employee is entitled to be credited with a day of service described in § 2530.200b-7(a)(1) after the first eligibility computation period in which the employee incurs a 1-year break in service following an eligibility computation period in which the employee is credited with more than 62 days of service.

(ii) In the case of an employee engaged in the maritime industry who is credited with no hours of service in an eligibility computation period beginning after the employee's reemployment commencement date established under paragraph (f)(2)(i) of this section, the employee shall be treated as having a new reemployment commencement date as of the first day for which the employee is entitled to be credited with day of service described in § 2530.200b-7(a)(1) after such eligibility computation period.

§ 2530.200b-7 Day of service for employees in the maritime industry.

(a) *General rule.* A day of service in the maritime industry which must, as a minimum, be counted for the purposes of determining a year of service, a year of participation for benefit accrual, a break in service and an employment commencement date (or reemployment commencement date) under sections 202, 203 and 204 of the Act and sections 410 and 411 of the Code by a plan that credits service by days of service rather than hours of service (as prescribed in § 2530.200b-2, or under equivalencies permitted under § 2530.200b-3) or elapsed time (as permitted under § 2530.200b-9), is a day of service as defined in paragraphs (a)(1), (2) and (3) of this section.

(1) A day of service is each day for which an employee is paid or entitled to payment for the performance of duties for the employer during the applicable computation period.

(2) A day of service is each day for which an employee is paid, or entitled

to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence:

(i) No more than 63 days of service are required to be credited under this paragraph (a)(2) to an employee on account of any single continuous period during which the employee performs no duties (whether or not such period occurs in a single computation period);

(ii) A day for which an employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation (including maintenance and care), or unemployment compensation or disability insurance laws; and

(iii) Days of service are not required to be credited for a payment which solely reimburses an employee for medical or medically related expenses incurred by the employee.

For purposes of this paragraph (a)(2), a payment shall be deemed to be made by or due from an employer regardless of whether such payment is made by or due from the employer directly, or indirectly through, among others, a trust, fund, or insurer, to which the employer contributes or pays premiums, and regardless of whether contributions made or due to the trust, fund, insurer or other entity are for the benefit of particular employees or are made on behalf of a group of employees in the aggregate.

(3) A day of service is each day for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the employer. Days of service shall not be credited both under paragraph (a)(1) or paragraph (a)(2), as the case may be, and under this subparagraph. Thus, for example, an employee who receives a back pay award following a determination that he or she was paid at an unlawful rate for days of service previously credited

will not be entitled to additional credit for the same days of service. Crediting of days of service for back pay awarded or agreed to with respect to periods described in paragraph (a)(2) shall be subject to the limitations set forth in that paragraph. For example, no more than 63 days of service are required to be credited for payments of back pay, to the extent that such back pay is agreed to or awarded for a period of time during which an employee did not or would not have performed duties.

(b) *Special rule for determining days of service for reasons other than the performance of duties.* In the case of a payment which is made or due on account of a period during which an employee performs no duties, and which results in the crediting of days of service under paragraph (a)(3) of this section, or, in the case of an award or agreement for back pay, to the extent that such award or agreement is made with respect to a period described in paragraph (a)(2) of this section, the number of days of service to be credited shall be determined as follows:

(1) *Payments calculated on the basis of units of time.* In the case of a payment made or due which is calculated on the basis of units of time, such as days, weeks or months, the number of days of service to be credited shall be the number of regularly scheduled working days included in the units of time on the basis of which the payment is calculated. For purposes of the preceding sentence, in the case of an employee without a regular work schedule, a plan may provide for the calculation of the number of days of service to be credited on the basis of a 5-day workweek, or may provide for such calculation on any reasonable basis which reflects the average days worked by the employee, or by other employees in the same job classification, over a representative period of time, provided that the basis so used is consistently applied with respect to all employees within the same job classifications, reasonably defined.

(2) *Payments not calculated on the basis of units of time.* Except as provided in paragraph (b)(3) of this section, in the case of a payment made or due, which is not calculated on the basis of units of time, the number of days of service

to be credited shall be equal to the amount of the payment divided by the employee's most recent daily rate of compensation before the period during which no duties are performed.

(3) *Rule against double credit.* Notwithstanding paragraphs (b)(1) and (2) of this section, an employee is not required to be credited on account of a period during which no duties are performed with a number of days of service which is greater than the number of days regularly scheduled for the performance of duties during such period. For purposes of the preceding sentence, in the case of an employee without a regular work schedule, a plan may provide for the calculation of the number of days of service to be credited to the employee for a period during which no duties are performed on the basis of a 5-day workweek, or may provide for such calculation on any reasonable basis which reflects the average hours worked by the employee, or by other employees in the same job classification, over a representative period of time, provided that the basis so used is consistently applied with respect to all employees in the same job classifications, reasonably defined.

(c) *Crediting of days of service to computation periods.* (1) Except as provided in paragraph (c)(4) of this section, days of service described in paragraph (a)(1) of this section shall be credited to the computation period in which the duties are performed.

(2) Except as provided in paragraph (c)(4) of this section, days of service described in paragraph (a)(2) of this section shall be credited as follows:

(i) Days of service credited to an employee on account of a payment which is calculated on the basis of units of time, such as days, weeks or months, shall be credited to the computation period or computation periods in which the period during which no duties are performed occurs, beginning with the first unit of time to which the payment relates.

(ii) Days of service credited to an employee by reason of a payment which is not calculated on the basis of units of time shall be credited to the computation period in which the period during which no duties are performed occurs, or if the period during which no duties

are performed extends beyond one computation period, such hours of service shall be allocated between not more than the first two computation periods on any reasonable basis which is consistently applied with respect to all employees within the same job classifications, reasonably defined.

(3) Except as provided in paragraph (c)(4) of this section, days of service described in paragraph (a)(3) of this section shall be credited to the computation period or periods to which the award or agreement for back pay pertains, rather than to the computation period in which the award, agreement or payment is made.

(4) In the case of days of service to be credited to an employee in connection with a period of no more than 31 days which extends beyond one computation period, all such days of service may be credited to the first computation period or the second computation period. Crediting of days of service under this paragraph must be done consistently with respect to all employees with the same job classifications, reasonably defined.

(d) *Other federal law.* Nothing in this section shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States or any rule or regulation issued under any such law. Thus, for example, nothing in this section shall be construed as denying an employee credit for a day of service if credit is required by separate federal law. Furthermore, the nature and extent of such credit shall be determined under such law.

(e) *Nondaily employees.* For maritime employees whose compensation is not determined on the basis of certain amounts for each day worked during a given period, service shall be credited on the basis of hours of service as determined in accordance with § 2530.200b-2(a) (including use of any equivalency permitted under § 2530.200b-3) or on the basis of elapsed time, as permitted under § 2530.200b-9.

(f) *Plan document.* A plan which credits service on the basis of days of service must state in the plan document the definition of days of service set forth in paragraph (a) of this section, but is not required to state the rules

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set forth in paragraphs (b) and (c) if they are incorporated by reference.

§ 2530.200b-8 Determination of days of service to be credited to maritime employees.

(a) *General rule.* For the purpose of determining the days of service which must be credited to an employee for a computation period, a plan shall determine days of service from records of days worked and days for which payment is made or due. Any records may be used to determine days of service to be credited to employees under a plan, even though such records are maintained for other purposes, provided that they accurately reflect the actual number of days of service with which an employee is required to be credited under § 2530.200b-7(a). Payroll records, for example, may provide sufficiently accurate data to serve as a basis for determining days of service. If, however, existing records do not accurately reflect the actual number of days of service with which an employee is entitled to be credited, a plan must develop and maintain adequate records. A plan may in any case credit days of service under any method which results in the crediting of no less than the actual number of days of service required to be credited under § 2530.200b-7(a) to each employee in a computation period, even though such method may result in the crediting of days of service in excess of the number of days required to be credited under § 2530.200b-7(a). A plan is not required to prescribe in its documents which records are to be used to determine days of service.

(b) *Determination of pre-effective date days of service.* To the extent that a plan is required to determine days of service completed before the effective date of part 2 of title I of the Act (see section 211 of the Act), the plan may use whatever records may be reasonably accessible to it and may make whatever calculations are necessary to determine the approximate number of hours of service completed before such effective date. For example, if a plan or an employer maintaining the plan has, or has access to, only the records of compensation of employees for the period before the effective date, it may derive the pre-effective date days of

service by using the daily rate for the period or the days customarily worked. If accessible records are insufficient to make an approximation of the number of pre-effective date days of service for a particular employee or group of employees, the plan may make a reasonable estimate of the days of service completed by such employee or employees during the particular period. For example, if records are available with respect to some employees, the plan may estimate the days of service of other employees in the same job classification based on these records. A plan may use the elapsed time method prescribed under § 2530.200b-9 to determine days of service completed before the effective date of part 2 of title I of the Act.

§ 2530.201-1 Coverage; general.

Coverage of the provisions of part 2 of title I of the Act is determined under a multiple step process. First, the plan must be an employee benefit plan as defined under section 3(3) of the Act and § 2510.3-3. (See also the definitions of employee welfare benefit plan, section 3(1) of the Act and § 2510.3-1 and employee pension benefit plan, section 3(2) of the Act and § 2510.3-2). Second, the employee benefit plan must be subject to title I of the Act. Coverage for title I is specified in section 4 of the Act. Third, section 201 of the Act specifies the employee benefit plans subject to title I which are not subject to the minimum standards of part 2 of title I of the Act. Section 2530.201-2 specifies the employee benefit plans subject to title I of the Act which are exempted from coverage under part 2 of title I of the Act and this part (2530).

§ 2530.201-2 Plans covered by part 2530.

This part (2530) shall apply to any employee benefit plan described in section 4(a) of the Act (and not exempted under section 4(b)) other than—

(a) An employee welfare benefit plan as defined in section 3(1) of the Act and § 2510.3-1;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of

management or highly compensated employees;

(c) A plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Code, if no part of the contributions to or under such plan are made by employers of participants in such plan;

(d) A trust described in section 501(c)(18) of the Code;

(e) A plan which is established and maintained by a labor organization described in section 501(c)(5) of the Code and which does not at any time after the date of enactment of the Act provide for employer contributions;

(f) Any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of the Code;

(g) An individual retirement account or annuity described in section 408 of the Code, or a retirement bond described in section 409 of the Code;

(h) An excess benefit plan as described in section 3(36) of the Act.

Subpart B—Participation, Vesting and Benefit Accrual

§ 2530.202-1 Eligibility to participate; general.

(a) Section 202 of the Act and section 410 of the Code contain minimum participation standards relating to certain employee pension benefit plans. In general, an employee pension benefit plan may not require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan in excess of limits established by section 202 of the Act and section 410 of the Code and the regulations issued thereunder. Service for this purpose is measured in units of years of service. Section 2530.202-2 sets forth rules relating to the computation periods which a plan must use to determine whether an employee has completed a year of service for purposes of eligibility to participate ("eligibility computation periods").

(b) For rules relating to "service with the employer or employers maintaining the plan", see § 2530.210.

§ 2530.202-2 Eligibility computation period.

(a) *Initial eligibility computation period.* For purposes of section 202(a)(1)(A)(ii) of the Act and section 410(a)(1)(A)(ii) of the Code, the initial eligibility computation period the plan must use is the 12-consecutive-month period beginning on the employment commencement date. An employee's employment commencement date is the first day for which the employee is entitled to be credited with an hour of service described in § 2530.200b-2(a)(1) for an employer maintaining the plan. (For establishment of a reemployment commencement date following a break in service, see § 2530.200b-4(b)(1)(iii) and (iv).)

(b) *Eligibility computation periods after the initial eligibility computation period.* In measuring years of service for purposes of eligibility to participate after the initial eligibility computation period, a plan may adopt either of the following alternatives:

(1) A plan may designate 12-consecutive-month periods beginning on the first anniversary of an employee's employment commencement date and succeeding anniversaries thereof as the eligibility computation period after the initial eligibility computation period; or

(2) A plan may designate plan years beginning with the plan year which includes the first anniversary of an employee's employment commencement date as the eligibility computation period after the initial eligibility computation period (without regard to whether the employee is entitled to be credited with 1,000 hours of service during such period), provided that an employee who is credited with 1,000 hours of service in both the initial eligibility computation period and the plan year which includes the first anniversary of the employee's employment commencement date is credited with two years of service for purposes of eligibility to participate.

(c) *Service prior to a break in service.* For purposes of applying section 202(b)(4) of the Act and section 410(a)(5)(D) of the Code (relating to years of service completed prior to a break in service for purposes of eligibility to participate), the computation

periods used by a plan in determining years of service before such break shall be the eligibility computation periods established in accordance with paragraphs (a) and (b) of this section.

(d) *Plans with 3-year 100 percent vesting.* A plan which, under 202(a)(1)(B)(i) of the Act and section 410(a)(1)(B)(i) of the Code, requires more than one year of service for eligibility to participate in the plan shall use an initial eligibility computation period established under paragraph (a) of this section and eligibility computation periods designated in accordance with paragraph (b) of this section. Thus, for the eligibility computation period after the initial eligibility computation period, such a plan may designate either eligibility computation periods beginning on anniversaries of an employee's employment commencement date or plan years beginning with the plan year which includes the anniversary of the first day of the initial eligibility computation period.

(e) *Alternative eligibility computation period.* The following rule is designed primarily for a plan using a recordkeeping system which does not permit the plan to identify an employee's employment commencement date (or, in the case of an employee who has incurred a one-year break in service, the employee's reemployment commencement date), but which does permit the plan to identify a period of no more than 31 days during which the employee's employment commencement date (or reemployment commencement date) occurred.

(1) A plan may use an initial eligibility computation period (or initial computation period for measuring completion of a year of service upon an employee's return after a one-year break in service) beginning on the first day of a period of no more than 31 days during which an employee's employment commencement date (or reemployment commencement date) occurs and ending on the anniversary of the last day of such period.

(2) If a plan uses an initial eligibility computation period (or initial computation period for measuring completion of a year of service upon an employee's return after a one-year break in service) permitted under paragraph

(e)(1) of this section, the plan shall use the following computation periods after the initial computation period:

(i) If the plan does not use plan years for computation periods after the initial computation period, the plan shall use computation periods beginning on anniversaries of the first day of the initial computation period and ending on anniversaries of the last day of the initial computation period, and including a period of at least 12 consecutive months.

(ii) If the plan uses plan years for computation periods after the initial computation period, the plan shall use plan years beginning with the plan year which includes the anniversary of the first day of the initial computation period.

(3) For purposes of determining an employee's commencement of participation under section 202(a)(4) of the Act and section 410(a)(4) of the Code, regardless of whether an eligibility computation period permitted under this paragraph includes a period longer than 12 consecutive months, an employee who completes 1,000 hours of service in such eligibility computation period shall be treated as having satisfied the plan's service requirement for eligibility to participate as of the last day of the 12-consecutive-month period beginning on the first day of such eligibility computation period. In the case of a plan described in section 202(a)(1)(B)(i) of the Act and section 410(a)(1)(B)(i) of the Code, the requirement of the preceding sentence shall apply only with respect to the last year of service required under the plan for eligibility to participate.

(4) *Example.* A plan maintained by Employer X obtains records from X which indicate the number of hours worked by an employee during a monthly payroll period. The records do not, however, break down the number of hours worked by an employee by days. Thus, after a new employee has begun employment with X it is impossible for the plan to ascertain the employee's employment commencement date from the records furnished by X (although it is possible for the plan to determine the month during which an

employee's employment commencement date occurred). For administrative convenience, in conjunction with the equivalency based on hours worked permitted under § 2530.200b-3(d)(1), and with the method of crediting hours of service to computation periods set forth in § 2530.200b-2(c)(4), the plan uses the alternative initial eligibility computation period permitted under this paragraph. The plan provides that an employee's initial eligibility computation period shall be the period beginning on the first day of the first monthly payroll period for which the employee is entitled to credit for the performance of duties and ending on the last day of the monthly payroll period which includes the anniversary of the last day of the initial monthly payroll period. This condition ensures that the initial eligibility computation period will include the 12-consecutive-month period beginning on the employee's employment commencement date and ending on the day before the anniversary of the employee's employment commencement date. If, however, an employee completes the plan's requirement of one year of service for eligibility to participate (*i.e.*, completion of 870 hours worked in an eligibility computation period) in the initial eligibility computation period, the plan provides that the employee is deemed to have satisfied the plan's service requirements for eligibility to participate as of the day before the anniversary of the first day of the initial eligibility computation period. This provision ensures that no employee who has in fact completed 1000 hours of service in the 12-consecutive-month period beginning on the employee's employment commencement date will be admitted to participation later than the date specified under section 202(a)(4) of the Act and section 410(a)(4) of the Code. For example, in the case of an employee who begins employment in January 1977, the employee's initial eligibility computation period begins on January 1, 1977 and ends on January 31, 1978. If the employee completes 879 hours worked in the initial eligibility computation period, the employee is treated as having met the plan's service requirements for eligibility to participate as of December 31, 1977. If the

plan provides for semi-annual entry dates of January 1 and July 1, and the employee has met any eligibility requirements of the plan other than the minimum service requirement as of December 31, 1977, the plan must provide that the employee commences participation as of January 1, 1978.

§ 2530.203-1 Vesting; general.

(a) Section 203 of the Act and section 411(a) of the Code contain minimum vesting standards relating to certain employee pension benefit plans. In general, a pension plan subject to section 203 of the Act or section 411(a) of the Code must meet certain requirements relating to an employee's nonforfeitable ("vested") right to his or her normal retirement benefit. One of these requirements specifies that an employee's accrued benefit derived from employer contributions must be vested in accordance with certain schedules. The schedules (or alternative minimum vesting standards) are generally based on the employee's number of years of service with the employer or employers maintaining the plan. Section 2530.203-2 sets forth rules relating to the computation periods used to determine whether an employee has completed a year of service for vesting purposes ("vesting computation periods").

(b) For rules relating to service with the employer or employers maintaining the plan, see § 2530.210.

§ 2530.203-2 Vesting computation period.

(a) *Designation of vesting computation periods.* Except as provided in paragraph (b) of this section, a plan may designate any 12-consecutive-month period as the vesting computation period. The period so designated must apply equally to all participants. This requirement may be satisfied even though the actual 12-consecutive-month periods are not the same for all employees (e.g., if the designated vesting computation period is the 12-consecutive-month period beginning on an employee's employment commencement date and anniversaries of that date). The plan is prohibited, however, from using any period that would result in artificial postponement of vesting credit, such as a period measured

by anniversaries of the date four months following the employment commencement date.

(b) *Plans with 3-year 100 percent vesting.* For rules regarding when a participant has a nonforfeitable right to his accrued benefit, see section 202(a)(1)(B)(i) of the Act and section 410(a)(1)(B)(i) of the Code and regulations issued thereunder.

(c) *Amendments to change the vesting computation period.* (1) A plan may be amended to change the vesting computation period to a different 12-consecutive-month period provided that as a result of such change no employee's vested percentage of the accrued benefit derived from employer contributions is less on any date after such change than such vested percentage would be in the absence of such change. A plan amendment changing the vesting computation period shall be deemed to comply with the requirements of this subparagraph if the first vesting computation period established under such amendment begins before the last day of the preceding vesting computation period and an employee who is credited with 1,000 hours of service in both the vesting computation period under the plan before the amendment and the first vesting computation period under the plan as amended is credited with 2 years of service for those vesting computation periods. For example, a plan which has been using a calendar year vesting computation period is amended to provide for a July 1-June 30 vesting computation period starting in 1977. Employees who complete more than 1,000 hours of service in both of the 12-month periods extending from January 1, 1977 to December 31, 1977 and from July 1, 1977 to June 30, 1978 are advanced two years on the plan's vesting schedule. The plan is deemed to meet the requirements of this subparagraph.

(2) For additional requirements pertaining to changes in the vesting schedule, see section 203(c)(1) of the Act and section 411(a)(10) of the Code and the regulations issued thereunder.

(d) *Service preceding a break in service.* For purposes of applying section 203(b)(3)(D) of the Act and section 411(a)(6)(D) of the Code, (relating to counting years of service before a

break in service for vesting purposes), the computation periods used by the plan in computing years of service before such break must be the vesting computation periods. (For application of the break in service rules, see section 203(b)(3)(D) and section 411(a)(6)(D) of the Code and regulations issued thereunder.)

§ 2530.203-3 Suspension of pension benefits upon employment.

(a) *General.* Section 203(a)(3)(B) of the Act provides that the right to the employer-derived portion of an accrued pension benefit shall not be treated as forfeitable solely because an employee pension benefit plan provides that the payment of benefits is suspended during certain periods of reemployment which occur subsequent to the commencement of payment of such benefits. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. A plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age, or for the suspension of that portion of pension benefits which exceeds the normal retirement benefit, or both, for any reemployment and without regard to the provisions of section 203(a)(3)(B) and this regulation to the extent (but only to the extent) that suspension of such benefits does not affect a retiree's entitlement to normal retirement benefits payable after attainment of normal retirement age, or the actuarial equivalent thereof.

(b) *Suspension rules—(1) General rule.* A plan may provide for the permanent withholding of an amount which does not exceed the suspendible amount of an employee's accrued benefit for each calendar month, or for each four or five week payroll period ending in a calendar month, during which an employee is employed in "section 203(a)(3)(B) service" as described in § 2530.203-3(c).

(2) *Resumption of payments.* If benefit payments have been suspended pursuant to paragraph (b)(1) of this section, payments shall resume no later than the first day of the third calendar month after the calendar month in

which the employee ceases to be employed in section 203(a)(3)(B) service: *Provided*, That the employee has complied with any reasonable procedure adopted by the plan for notifying the plan that he has ceased such employment. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.

(3) *Offset rules*. A plan which provides for the permanent withholding of benefits may deduct from benefit payments to be made by the plan payments previously made by the plan during those calendar months or pay periods in which the employee was employed in section 203(a)(3)(B) service, *Provided*, That such deduction or offset does not exceed in any one month 25 percent of that month's total benefit payment which would have been due but for the offset (excluding the initial payment described in paragraph (b)(2) of this section, which may be subject to offset without limitation).

(4) *Notification*. No payment shall be withheld by a plan pursuant to this section unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the plan provisions relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in § 2530.203-3 of the Code of Federal Regulations. In addition, the suspension notification shall inform the employee of the plan's procedure for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations. In the case of a plan which requires the filing of a benefit resumption notice as a condition precedent to the resumption of benefits, the suspen-

sion notification shall also describe the procedure for filing such notice and include the forms (if any) which must be filed. Furthermore, if a plan intends to offset any suspendible amounts actually paid during the periods of employment in section 203(a)(3)(B) service, the notification shall identify specifically the periods of employment, the suspendible amounts which are subject to offset, and the manner in which the plan intends to offset such suspendible amounts. Where the plan's summary plan description (SPD) contains information which is substantially the same as information required by this paragraph (b)(4), the suspension notification may refer the employee to relevant pages of the SPD for information as to a particular item, provided the employee is informed how to obtain a copy of the SPD, or relevant pages thereof, and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.

(5) *Verification*. A plan may provide that an employee must notify the plan of any employment. A plan may request from an employee access to reasonable information for the purpose of verifying such employment. Furthermore, a plan may provide that an employee must, at such time and with such frequency as may be reasonable, as a condition to receiving future benefit payments, either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute section 203(a)(3)(B) service if specifically requested by the plan administrator. Once an employee has furnished the required certification or information, the plan must forward, at the next regularly scheduled time for payment of benefits, all payments which had been withheld pursuant to this paragraph (b)(5) except to the extent that payments may be withheld and offset pursuant to other provisions of this regulation.

(6) *Status determination*. If a plan provides for benefits suspension, the plan shall adopt a procedure, and so inform employees, whereunder an employee may request, and the plan administrator in a reasonable amount of time will render, a determination of whether

specific contemplated employment will be section 203(a)(3)(B) service for purposes of plan provisions concerning suspension of benefits. Requests for status determinations may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations.

(7) *Presumptions.* (i) A plan which has adopted verification requirements described in paragraph (b)(5) of this section, and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service and the retiree has not complied with the plan's reporting requirements with regard to that employment, the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree had worked a period exceeding the plan's minimum number of hours for that month. In addition, a plan covering persons employed in the building trades which has adopted verification requirements described in paragraph (b)(5) of this section and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service at a construction site and the retiree has not complied with the plan's reporting requirements with regard to that employment, then the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree engaged in such employment for the same employer in work at that site for so long before the work in question as that same employer performed that work at that construction site.

(ii) A plan which provides for a presumption described in paragraph (b)(7)(i) of this section may employ such presumption only if the following requirements are met. The plan must describe its employment verification requirements and the nature and effect of such presumption in the plan's summary plan description and in any com-

munication to plan participants which relates to such verification requirements (for example, employment reporting reminders or forms), and retirees must be furnished such disclosure, whether through receipt of the above communications or by special distribution, at least once every 12 months.

(c) *Section 202(a)(3)(B) service*—(1) *Plans other than multiemployer plans.* In the case of a plan other than a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee, subsequent to the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in a calendar month, if the employee, in such month or payroll period,

(i) Completes 40 or more hours of service (as defined in 29 CFR 2530.200b-2(a)(1) and (2)) for an employer which maintains the plan, including employers described in § 2530.210 (d) and (e), as of the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment; or

(ii) Receives from such employer payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period, *Provided*, That the plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200b-2(a).

(2) *Multiemployer plans.* In the case of a multiemployer plan, as defined in section 3(37) of the Act, the employment of an employee subsequent to the time the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in a calendar month, if the employee, in such month or payroll period:

—Completes 40 or more hours of service (as defined in § 2530.200b-2(a)(1) and (2)) or

- Receives payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period, *Provided*, That the plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200(b)–(2)(a); in
- An industry in which employees covered by the plan were employed and accrued benefits under the plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and
- A trade or craft in which the employee was employed at any time under the plan, and
- The geographic area covered by the plan at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment.

(i) *Industry*. The term “industry” means the business activities of the types engaged in by any employers maintaining the plan.

Example. One of the employers contributing to a multiemployer plan engages in heavy construction, another in textile manufacturing, and another in communications. Employee E began his career as an employee of an employer engaged in heavy construction. Later E was employed by an employer in communications. With both employers, E accrued benefits under the plan. If E retires and then becomes reemployed in the same trade or craft and in the same geographic area, employment by E in either heavy construction, communications or textile manufacturing, whether or not with an employer who contributes to the plan or in a self-employed capacity, may be considered by the plan to be employment in the same industry, assuming that employees covered by the plan were accruing benefits as a result of employment in these industries at the time E commenced receiving benefits. This is true even though E did not previously accrue benefits as a result of employment with an employer engaged in textile manufacturing because other employees covered by the plan were employed in that industry and were accruing benefits under the plan as a result of such employment at the time when benefit payments to E commenced or would have commenced if E had not returned to employment.

(ii) *Trade or craft*. A trade or craft is (A) a skill or skills, learned during a significant period of training or practice, which is applicable in occupations in some industry, (B) a skill or skills relating to selling, retailing, managerial, clerical or professional occupa-

tions, or (C) supervisory activities relating to a skill or skills described in (A) or (B) of this paragraph (c)(2)(ii). For purposes of this paragraph (c)(2)(ii), the determination whether a particular job classification, job description or industrial occupation constitutes or is included in a trade or craft shall be based upon the facts and circumstances of each case. Factors which may be examined include whether there is a customary and substantial period of practical, on-the-job training or a period of related supplementary instruction. Notwithstanding any other factor, the registration of an apprenticeship program with the Bureau of Apprenticeship and Training of the Employment Training Administration of the U.S. Department of Labor is sufficient for the conclusion that a skill or skills which is the subject of the apprenticeship program constitutes a trade or craft.

Example. Participation in a multiemployer plan is limited solely to electricians. Electrician E retired and then became reemployed as a foreman of electricians. Because a “trade or craft” includes related supervisory activities, E remains within his trade or craft for purposes of this section.

(iii) *Geographic area covered by the plan*. (A) With the exception of a plan covering employees in a maritime industry, the “geographic area covered by the plan” consists of any state or any province of Canada in which contributions were made or were required to be made by or on behalf of an employer and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such state, determined as of the time that the payment of benefits commenced or would have commenced if the employee had not returned to employment.

Example. A multiemployer plan covers plumbers in Pennsylvania. All contributing employers have always been located within Pennsylvania. Accordingly, the “geographic area covered by the plan” consists of Pennsylvania and any SMSAs which fall in part within Pennsylvania. Thus, for example, in the case of the Philadelphia SMSA, Burlington, Camden and Gloucester Counties in New Jersey are within the “geographic area covered by the plan”.

(B) [Reserved—for definition of the geographic area covered by a plan that

covers employees in a maritime industry.]

For purposes of this paragraph (c)(2)(iii), contributions shall not include amounts contributed: After December 31, 1978 by or on behalf of an employer where no contributions were made by or on behalf of that employer before that date, if the primary purpose of such contribution is to allow for the suspension of plan benefits in a geographic area not otherwise covered by the plan; or with respect to isolated projects performed in states where plan participants were not otherwise employed.

(3) *Employment in a maritime industry.* For plans covering employees employed in a maritime industry, as defined in § 2530.200b-6, the standard of “five or more days of service, as defined in § 2530.200b-7(a)(1)” shall be used in lieu of the standard “40 or more hours of service”, for purposes of determining whether an employee is employed in section 203(a)(3)(B) service.

(d) *Suspendable amount—(1) Life annuity.* In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a straight life annuity or a qualified joint and survivor annuity, a plan may provide that an amount not greater than the portion of a monthly benefit payment derived from employer contributions may be withheld permanently for a calendar month, or for a four or five week payroll period ending in a calendar month, in which the employee is employed in section 203(a)(3)(B) service.

(2) *Other benefit forms.* In the case of benefits payable in a form other than the form described in paragraph (d)(1) of this section, a plan may provide for the permanent withholding of an amount of the employer-derived portion of benefit payments for a calendar month, or for a four or five week payroll period ending in a calendar month, in which the employee is employed in section 203(a)(3)(B) service, not exceeding the lesser of—

(i) The amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the plan since actual retirement based on a single life annu-

ity commencing at actual retirement age; or

(ii) The actual amount paid or scheduled to be paid to the employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of this paragraph (d)(2)(ii).

(Approved by the Office of Management and Budget under control number 1210-0048)

[46 FR 8903, Jan. 27, 1981, as amended at 46 FR 59245, Dec. 4, 1981; 46 FR 60572, Dec. 11, 1981; 49 FR 18295, Apr. 30, 1984]

§ 2530.204-1 Year of participation for benefit accrual.

(a) *General.* Section 204(b)(1) of the Act and section 411(b)(1) of the Code contain certain requirements relating to benefit accrual under a defined benefit pension plan. Some of these requirements are based on the number of years of participation included in an employee's period of service. Paragraph (b) of this section relates to service which must be taken into account in determining an employee's period of service for purposes of benefit accrual. Section 2530.204-2 sets forth rules relating to the computation periods to be used in measuring years of participation for benefit accrual (“accrual computation periods”).

(b) *Service which may be disregarded for purposes of benefit accrual.* (1) In calculating an employee's period of service for purposes of benefit accrual under a defined benefit pension plan, section 204(b)(3) of the Act and section 411(b)(3) of the Code permit the following service to be disregarded: service before an employee first becomes a participant in the plan; service which is not required to be taken into account under section 202(b) of the Act and section 410(b)(5) of the Code (relating to one-year breaks in service for purposes of eligibility to participate); and service which is not required to be taken into account under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code (relating to 12-consecutive-month periods during which an employee's service is less than 1,000 hours). In addition, in calculating an employee's period of service for purposes of benefit accrual, a defined benefit plan shall not be required

to take into account service before the conclusion of a series of consecutive 1-year breaks in service occurs which permits a plan to disregard prior service under section 203(b)(3)(D) of the Act and section 411(a)(6)(D) of the Code.

(2) *Example.* The following example illustrates paragraph (b)(1) of this section. A plan has a calendar year vesting and accrual computation period and, under §2530.202-2 (a) and (b)(1), uses eligibility computation periods beginning on an employee's employment commencement date and anniversaries thereof. The plan provides that an employee who has at least 10 years of service has a vested right to 100 percent of his accrued benefit derived from employer contributions. The plan provides that an employee who is credited with at least 1,000 hours of service in a calendar year accrual computation period is credited with at least partial year of participation for purposes of benefit accrual. An employee whose birthday is October 16, 1956, begins employment with an employer maintaining the plan on January 1, 1977. Under §2530.202-2(a)(1), January 1, 1977 is the employee's employment commencement date and the calendar year 1977 is the employee's initial eligibility computation period. The employee completes at least 1,000 hours of service in each of the calendar years from 1977 through 1981. On January 1, 1982 the employee is admitted to participation in the plan, having met the plan's age requirement (25 years) and service requirement (one year of service) for eligibility to participate. In 1982, the employee is credited with the number of hours of service required for a full year of participation (*i.e.*, more than 1,000 hours of service). Under §2530.202-2(c), for purposes of applying section 202(b)(4) of the Act and section 410(a)(5)(D) of the Code (relating to years of service completed before a break in service for purposes of eligibility to participate), eligibility computation periods beginning on the employee's employment commencement date and anniversaries thereof are used under the plan to measure service prior to a break in service (in addition, under §2530.200b-4(a)(2), the same eligibility computation periods are used in measuring one-year breaks in service

for purposes of eligibility to participate). Thus, as of January 1, 1983, the employee is credited with six years of service for purposes of eligibility to participate and is credited with one year of participation. In accordance with section 203(b)(1)(A) of the Act and section 411(a)(4)(A) of the Code, the plan provides that years of service completed before age 22 are disregarded for purposes of vesting. As of January 1, 1983, therefore, the employee is credited with four years of service for purposes of vesting. In 1983 the employee terminates employment with the employer, incurring one-year breaks in service in each of the calendar years from 1983 through 1986. As of December 31, 1986, the employee's consecutive one-year breaks in service equal the employee's four years of service for vesting before such breaks. Under section 203(b)(3)(D) of the Act and section 410(a)(5)(D) of the Code and the terms of the plan, the four years of service for vesting completed by the employee before his four consecutive one-year breaks in service are not taken into account for purposes of vesting. Under paragraph (b)(1) of this section, therefore, in calculating the employee's period of service for purposes of benefit accrual, the plan may disregard the year of participation completed by the employee before his four consecutive one-year breaks in service for vesting, because the four consecutive one-year breaks in service equal the four years of service credited to the employee for vesting. The employee is re-employed by the employer on January 1, 1987 completing an hour of service on that date. Under §2530.200b-4(b)(1), therefore, January 1, 1987 is the employee's reemployment commencement date. In 1987, the employee completes the number of hours of service required for a full year of participation (*i.e.*, more than 1,000 hours of service). For 1987, therefore, the employee is credited with a year of service for purposes of eligibility to participate and vesting, and with a year of participation. As of December 31, 1987, the employee is credited with one year of service for purposes of vesting, since service before the employee's four consecutive one-year breaks in service—including the year of service completed in 1982—

is not taken into account. Because under paragraph (b)(1) of this section, the year of participation credited to the employee for 1982 is not required to be taken into account for purposes of benefit accrual, the employee is credited with one year of participation as of December 31, 1987.

§ 2530.204-2 Accrual computation period.

(a) *Designation of accrual computation periods.* A plan may designate any 12-consecutive-month period as the accrual computation period except that the period so designated must apply equally to all participants. This requirement may be satisfied even though the actual time periods are not the same for all participants. For example, the accrual computation period may be designated as the vesting computation period, the plan year, or the 12-consecutive-month period beginning on either of two semi-annual dates designated for entry to participation under a plan.

(b) *Participation prior to effective date.* For purposes of applying the accrual rules of section 204(b)(1)(D) of the Act and section 411(b)(1)(D) of the Code (relating to accrual requirements for defined benefit plans for periods prior to the effective date of those sections), all service from the date of participation in the plan as determined in accordance with applicable plan provisions, shall be taken into account in determining an employee's period of service. When the plan documents do not provide a definite means for determining the date of commencement of participation, the date of commencement of employment covered under the plan during the period that the employer maintained the plan shall be presumed to be the date of commencement of participation in the plan. The plan may rebut this presumption by demonstrating from circumstances surrounding the operation of the plan, such as the date of commencement of mandatory employee contributions, that participation actually began on a later date.

(c) *Partial year of participation.* (1) Under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code, in calculating an employee's period of

service for purposes of benefit accrual, a plan is not required to take into account a 12-consecutive-month period during which the employee's service is less than 1,000 hours of service. In measuring an employee's service for purposes of section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code, a plan shall use the accrual computation period designated under paragraph (a) of this section. Under section 204(b)(3)(B) of the Act and section 411(b)(3)(B) of the Code, in the case of an employee whose service is not less than 1,000 hours of service during an accrual computation period, the calculation of such employee's period of service will not be treated as made on a reasonable and consistent basis unless service during such computation period is taken into account. To the extent that the employee's service during the accrual computation period is less than the service required under the plan for a full year of participation, the employee must be credited with a partial year of participation equivalent to no less than a ratable portion of a full year of participation.

(2) For purposes of calculating the portion of a full year of participation to be credited to an employee whose service during a computation period is not less than 1,000 hours of service but is less than service required for a full year of participation in the plan, the plan may credit the employee with a greater portion of a full year of participation than a ratable portion, or may credit an employee with a full year of participation even though the employee's service is less than the service required for a full year of participation, provided that such crediting is reasonable and is consistent for all employees within the same job classifications, reasonably established.

(3) In the case of an employee who commences participation in a plan (or recommences participation in the plan upon the employee's return after one or more 1-year breaks in service) on a date other than the first day of an applicable accrual computation period, all hours of service required to be credited to the employee during the entire accrual computation period, including

hours of service credited to the employee for the portion of the computation period before the date on which the employee commences (or recommences) participation, shall be taken into account in determining whether the employee has 1,000 or more hours of service for purposes of section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code. If such employee's service is not less than 1,000 hours in such accrual computation period, the employee must be credited with a partial year of participation which is equivalent to no less than a ratable portion of a full year of participation for service credited to the employee for the portion of the computation period after the date of commencement (or recommencement) of participation.

(4) *Examples.* The following are examples of reasonable and consistent methods for crediting partial years of participation:

(i) A plan requires 2,000 hours of service for a full year of participation. An employee who is credited during a computation period with no less than 1,000 hours of service but less than 2,000 hours of service is credited with a partial year of participation equal to a portion of a full year of participation determined by dividing the number of hours of service credited to the employee by 2,000.

(ii) A plan requires 2,000 hours of service for a full year of participation. The plan credits service in an accrual computation period in accordance with the following table:

Hours of service credited	Percentage of full year of participation credited
1000	50
1001 to 1200	60
1201 to 1400	70
1401 to 1600	80
1601 to 1800	90
1801 and above	100

Under this method of crediting partial years of participation, each employee who is credited with not less than 1,000 hours of service is credited with at least a ratable portion of a full year of participation.

(iii) A plan provides that each employee who is credited with at least 1,000 hours of service in an accrual computation period must receive credit

for at least a partial year of participation for that computation period. For full accrual, however, the plan requires that an employee must be credited with a specified number of hours worked; employees who meet the 1,000 hours of service requirement but who are not credited with the specified number of hours worked required for a full year of participation are credited with a partial year of participation on a prorata basis. For example, if the plan requires 1,500 hours worked for full accrual, an employee with 1,500 hours worked would be credited with full accrual, but an employee with 1,000 hours worked and 500 other hours of service would be credited with $\frac{2}{3}$ of full accrual. The plan's method of crediting service for accrual purposes is consistent with the requirements of this paragraph. It should be noted, however, that use of hours worked as a basis for prorating benefit accrual may result in discrimination prohibited under section 401(a)(4) of the Code.

(iv) Employee A is employed on June 1, 1980 in service covered by a plan with a calendar year accrual computation period, and which requires 1,800 hours of service for a full accrual. Employee A completes 500 hours from June 1, 1980 to December 31, 1980, and completes 100 hours per month in each month during 1981. A is admitted to participation on July 1, 1981. A is credited with 1,200 hours of service for the accrual computation period beginning January 1, 1981. Under the rules set forth in paragraph (c)(3) of this section, A is required to be credited with not less than one-third of a full accrual (600 hours divided by 1,800 hours).

(d) *Prohibited double proration.* (1) In the case of a defined benefit plan that (i) defines benefits on a basis which has the effect of prorating benefits to reflect less than full-time employment or less than maximum compensation and (ii) does not adjust less-than-full-time service to reflect the equivalent of full-time hours or compensation (as the case may be), the plan may not further prorate benefit accrual under section 204(b)(3)(B) of the Act and section 411(b)(3)(B) of the Code by crediting less than full years of participation, as would otherwise be permitted under paragraph (c) of this section. These

plans must credit, except when service may be disregarded under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code (relating to less than 1,000 hours of service), less-than-full-time employees with a full year of participation for the purpose of accrual of benefits.

(2) *Examples.* (i) A plan's defined benefit formula provides that the annual retirement benefit shall be 2 percent of the average compensation in all years of participation multiplied by the number of years of participation. Employee A is a full-time employee who has completed 2,000 hours during each of 20 accrual computation periods. A's average hourly rate was \$5 an hour. Thus, A's average compensation for each year during participation in the plan is \$10,000 (\$5 per hour multiplied by 2,000 hours). If the plan states that a full year of participation is 2,000 hours, then A's annual retirement benefits, if he retired at that time, would be \$4,000 (\$10,000 per year of compensation $\times .02 \times 20$ years of participation). Employee B, however, is a part-time employee who completes 1,000 hours of service during each of 20 accrual computation periods. Like A, B's average hourly rate is \$5 per hour. B's average compensation for his total years of participation is \$5,000 (\$5 per hour multiplied by 1,000 hours). Thus, the plan's benefit formula, by basing benefits on an employee's average compensation in all years of participation, in effect prorates benefits to reflect the fact that during B's participation in the plan, he has earned less than the maximum compensation that a full-time employee paid at the same rate could earn during the same period of participation in the plan. Under the rule of subparagraph (1), therefore, the plan is not permitted to prorate B's years of participation to reflect B's less than full-time employment throughout his participation in the plan. Therefore, B's annual retirement benefit would be \$2,000 (\$5,000 average compensation $\times .02 \times 20$ years of participation). (If double proration were permitted, then B's total years of participation would be only 10 since he would be credited with only one-half of a year of participation during each of the accrual computation periods (1,000/2,000). Thus, B's annual

retirement benefit would be \$1,000—i.e., \$5,000 average compensation $\times .02 \times 10$ years of participation.)

(ii) If the plan adjusts the average compensation during plan participation to reflect full compensation, then the plan may prorate years of participation. Thus, the average full annual compensation for B would be \$10,000 rather than the \$5,000 actually paid. Employee B's annual retirement benefit would then be \$2,000 (\$10,000 average full compensation $\times .02 \times 10$ years of participation).

(e) *Amendments to change accrual computation periods.* (1) A plan may be amended to change the accrual computation period to a different 12-consecutive-month period, provided that the period between the end of the last accrual computation period under the plan as in effect before such amendment and the beginning of the first accrual computation period under the plan as amended is treated as a partial accrual computation period in accordance with the rules set forth in paragraph (e)(2) of this section.

(2) In the case of a partial accrual computation period, the following rules shall apply:

(i) A plan having a minimum service requirement expressed in hours of service (or other units of service) for benefit accrual in a full accrual computation period (as permitted under section 204(b)(3)(B) of the Act and section 411(b)(3)(B) of the Code) may apply a minimum service requirement for benefit accrual in a partial accrual computation period which is equal to the plan's minimum service requirement for benefit accrual in a full accrual computation period, multiplied by the ratio of the length of the partial accrual computation period to a full year.

(ii) In the case of a participant who meets a plan's minimum service requirement for benefit accrual in a partial accrual computation period (as permitted under paragraph (e)(2)(i) of this section), the plan shall credit the participant with at least a partial year of participation for purposes of benefit accrual. Credit for a partial accrual computation period shall be determined in accordance with paragraphs (c) and (d) of this section.

(3) *Example.* Effective October 1, 1977, a plan is amended to change the accrual computation period from the 12-consecutive-month period beginning on January 1 to the 12-consecutive-month period beginning on October 1. The period from January 1, 1977 to September 30, 1977 must be treated as a partial accrual computation period. The plan has a requirement that a participant must be credited with 1,000 hours of service in an accrual computation period in order to be credited with a year of participation for purposes of benefit accrual. For the partial accrual computation period the plan may require a participant to be credited with 750 hours of service in the partial accrual computation period in order to receive credit for purposes of benefit accrual (1,000 hours of service multiplied by the ratio of 9 months to 12 months). To the extent permitted under paragraph (d) of this section, the plan may prorate accrual credit on whatever basis the plan uses to prorate accrual credit for employees whose service is 1,000 hours of service or more but less than service required for full accrual in a full accrual computation period.

§ 2530.204-3 Alternative computation methods for benefit accrual.

(a) *General.* Under section 204(b)(3)(A) of the Act and section 411(b)(3)(A) of the Code, a defined benefit pension plan may determine an employee's service for purposes of benefit accrual on the basis of accrual computation periods, as specified in § 2530.204-2, or on any other basis which is reasonable and consistent and which takes into account all covered service during the employee's participation in the plan which is included in a period of service required to be taken into account under section 202(b) of the Act and section 410(a)(5) of the Code. If, however, a plan determines an employee's service for purposes of benefit accrual on a basis other than computation periods, it must be possible to prove that, despite the fact that benefit accrual under the plan is not based on computation periods, the plan's provisions meet at least one of the three benefit accrual rules of section 204(b)(1) of the Act and section 411(b)(1) of the Code under all circumstances. Further, a

plan which does not provide for benefit accrual on the basis of computation periods may not disregard service under section 204(b)(3)(C) of the Act and section 411(b)(3)(C) of the Code.

(b) *Examples.* The following are examples of methods of determining an employee's period of service for purposes of benefit accrual under which an employee's period of service is not determined on the basis of computation periods but which may be used by a plan provided that the requirements of paragraph (a) of this section are met:

(1) *Career compensation.* A defined benefit formula based on a percentage of compensation earned in a participant's career or during participation, with no variance depending on hours completed in given periods.

(2) *Credited hours.* A defined benefit formula pursuant to which an employee is credited with a specified amount of accrual for each hour of service (or hour worked or regular time hour) completed by the employee during his or her career.

(3) *Elapsed time.* See § 2530.200b-9(e).

§ 2530.204-4 Deferral of benefit accrual.

For purposes of section 204(b)(1)(E) of the Act and section 411(b)(1)(E) of the Code (which permit deferral of benefit accrual until an employee has 2 continuous years of service), an employee shall be credited with a year of service for each computation period in which he or she completes 1,000 hours of service. The computation period shall be the eligibility computation period designated in accordance with § 2530.202-2.

Subpart C—Form and Payment of Benefits

§ 2530.205 [Reserved]

§ 2530.206 Time and order of issuance of domestic relations orders.

(a) *Scope.* This section implements section 1001 of the Pension Protection Act of 2006 by clarifying certain timing issues with respect to domestic relations orders and qualified domestic relations orders under the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1001 *et seq.* The examples herein illustrate the

application of this section in certain circumstances. This section also applies in circumstances not described in the examples.

(b) *Subsequent domestic relations orders.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order.

(2) The rule described in paragraph (b)(1) of this section is illustrated by the following examples:

Example (1). Subsequent domestic relations order between the same parties. Participant and Spouse divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse as the alternate payee. Subsequently, before benefit payments have commenced, Participant and Spouse seek and receive a second domestic relations order. The second order reduces the portion of Participant's benefits that Spouse was to receive under the QDRO. The second order does not fail to be treated as a QDRO solely because the second order is issued after, and reduces the prior assignment contained in, the first order. The result would be the same if the order were instead to increase the prior assignment contained in the first order.

Example (2). Subsequent domestic relations order between different parties. Participant and Spouse 1 divorce and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO allocates a portion of Participant's benefits to Spouse 1 as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits not already allocated to Spouse 1. The second order does not fail to be a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO.

(c) *Timing.* (1) Subject to paragraph (d)(1) of this section, a domestic relations order shall not fail to be treated as a qualified domestic relations order solely because of the time at which it is issued.

(2) The rule described in paragraph (c)(1) of this section is illustrated by the following examples:

Example (1). Orders issued after death. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order, but the administrator finds the order deficient and determines that it is not a QDRO. Shortly thereafter, Participant dies while actively employed. A second domestic relations order correcting the defects in the first order is subsequently submitted to the plan. The second order does not fail to be treated as a QDRO solely because it is issued after the death of the Participant. The result would be the same even if no order had been issued before the Participant's death, in other words, the order issued after death were the only order.

Example (2). Orders issued after divorce. Participant and Spouse divorce. As a result, Spouse no longer meets the definition of "surviving spouse" under the terms of the plan. Subsequently, the plan administrator receives a domestic relations order requiring that Spouse be treated as the Participant's surviving spouse for purposes of receiving a death benefit payable under the terms of the plan only to a participant's surviving spouse. The order does not fail to be treated as a QDRO solely because, at the time it is issued, Spouse no longer meets the definition of a "surviving spouse" under the terms of the plan.

Example (3). Orders issued after annuity starting date. Participant retires and begins receipt of benefits in the form of a straight life annuity, equal to \$1,000 per month, and with respect to which Spouse has consented to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Subsequent to the commencement of benefits (in other words, subsequent to the annuity starting date as defined in section 205(h)(2) of ERISA and as further explained in 26 CFR 1.401(a)-20, Q&A-10(b)), Participant and Spouse divorce and present the plan with a domestic relations order requiring 50 percent (\$500) of Participant's future monthly annuity payments under the plan to be paid instead to Spouse, as an alternate payee (so that monthly payments of \$500 are to be made to Spouse during Participant's lifetime). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date. If the order instead had required payments to Spouse for the lifetime of Spouse, this would constitute a reannuitization with a new annuity starting date, rather than merely allocating to Spouse a part of the determined annuity payments due to Participant, so that the order, while not failing to be a QDRO because of the timing of the order, would fail

to meet the requirements of section 206(d)(3)(D)(i) of ERISA (unless the plan otherwise permits such a change after the participant's annuity starting date). See 29 CFR 2530.206(d)(2), Example (4).

(d) *Requirements and protections.* (1) Any domestic relations order described in this section shall be a qualified domestic relations order only if the order satisfies the same requirements and protections that apply under section 206(d)(3) of ERISA.

(2) The rule described in paragraph (d)(1) of this section is illustrated by the following examples:

Example (1). Type or form of benefit. Participant and Spouse divorce, and their divorce decree provides that the parties will prepare a domestic relations order assigning 50 percent of Participant's benefits under a 401(k) plan to Spouse to be paid in monthly installments over a 10-year period. Shortly thereafter, Participant dies while actively employed. A domestic relations order consistent with the divorce decree is subsequently submitted to the 401(k) plan; however, the plan does not provide for 10-year installment payments of the type described in the order. Pursuant to paragraph (c)(1) of this section, the order does not fail to be treated as a QDRO solely because it is issued after the death of Participant, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan.

Example (2). Segregation of payable benefits. Participant and Spouse divorce, and the administrator of Participant's plan receives a domestic relations order under which Spouse would begin to receive benefits immediately if the order is determined to be a QDRO. The plan administrator separately accounts for the amounts covered by the domestic relations order as is required under section 206(d)(3)(H)(v) of ERISA. The plan administrator finds the order deficient and determines that it is not a QDRO. Subsequently, after the expiration of the segregation period pertaining to that order, the plan administrator receives a second domestic relations order relating to the same parties under which Spouse would begin to receive benefits immediately if the second order is determined to be a QDRO. Notwithstanding the expiration of the first segregation period, the amounts covered by the second order must be separately accounted for by the plan administrator for an 18-month period, in accordance with section 206(d)(3)(H) of ERISA and paragraph (d)(1) of this section.

Example (3). Previously assigned benefits. Participant and Spouse 1 divorce, and the administrator of Participant's 401(k) plan receives a domestic relations order. The administrator determines that the order is a QDRO. The QDRO assigns a portion of Participant's benefits to Spouse 1 as the alternate payee. Participant marries Spouse 2, and then they divorce. Participant's 401(k) plan administrator subsequently receives a domestic relations order pertaining to Spouse 2. The order assigns to Spouse 2 a portion of Participant's 401(k) benefits already assigned to Spouse 1. The second order does not fail to be treated as a QDRO solely because the second order is issued after the plan administrator has determined that an earlier order pertaining to Spouse 1 is a QDRO. The second order, however, would fail to be a QDRO under section 206(d)(3)(D)(iii) and paragraph (d)(1) of this section because it assigns to Spouse 2 all or a portion of Participant's benefits that are already assigned to Spouse 1 by the prior QDRO.

Example (4). Type or form of benefit. Participant retires and commences benefit payments in the form of a straight life annuity based on the life of Participant, with respect to which Spouse consents to the waiver of the surviving spousal rights provided under the plan and section 205 of ERISA. Participant and Spouse divorce after the annuity starting date and present the plan with a domestic relations order that eliminates the straight life annuity based on Participant's life and provides for Spouse, as alternate payee, to receive all future benefits in the form of a straight life annuity based on the life of Spouse. The plan does not allow reannuitization with a new annuity starting date, as defined in section 205(h)(2) of ERISA (and as further explained in 26 CFR 1.401(a)-20, Q&A-10(b)). Pursuant to paragraph (c)(1) of this section, the order does not fail to be a QDRO solely because it is issued after the annuity starting date, but the order would fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section because the order requires the plan to provide a type or form of benefit, or any option, not otherwise provided under the plan. However, the order would not fail to be a QDRO under section 206(d)(3)(D)(i) and paragraph (d)(1) of this section if instead it were to require all of Participant's future payments under the plan to be paid instead to Spouse, as an alternate payee (so that payments that would otherwise be paid to the Participant during the Participant's lifetime are instead to be made to the Spouse during the Participant's lifetime).

[75 FR 32850, June 10, 2010]

Subpart D—Plan Administration as Related to Benefits

§§ 2530.207–2530.209 [Reserved]

§ 2530.210 Employer or employers maintaining the plan.

(a) *General statutory provisions—*(1) *Eligibility to participate and vesting.* Except as otherwise provided in section 202(b) or 203(b)(1) of the Act and sections 410(a)(5), 411(a)(5) and 411(a)(6) of the Code, all years of service with the employer or employers maintaining the plan shall be taken into account for purposes of section 202 of the Act and section 410 of the Code (relating to minimum eligibility standards) and section 203 of the Act and section 411(a) of the Code (relating to minimum vesting standards).

(2) *Accrual of benefits.* Except as otherwise provided in section 202(b) of the Act and section 410(a)(5) of the Code, all years of participation under the plan must be taken into account for purposes of section 204 of the Act and section 411(b) of the Code (relating to benefit accrual). Section 204(b) of the Act and section 411(b) of the Code require only that periods of actual participation in the plan (e.g., covered service) be taken into account for purposes of benefit accrual.

(b) *General rules concerning service to be credited under this section.* Section 210 of the Act and sections 413(c), 414(b), and 414(c) of the Code provide rules applicable to sections 202, 203, and 204 of the Act and sections 410, 411(a), and 411(b) of the Code for purposes of determining who is an “employer or employers maintaining the plan” and, accordingly, what service is required to be taken into account in the case of a plan maintained by more than one employer. Paragraphs (c) through (e) of this section set forth the rules for determining service required to be taken into account in the case of a plan or plans maintained by multiple employers, controlled groups of corporations and trades or businesses under common control. Note throughout that every mention of multiple employer plans includes multiemployer plans. See § 2530.210(c)(3). Paragraph (f) of this section sets forth special break in service rules for such plans. Paragraph (g) of

this section applies the break in service rules of sections 202(b)(4) and 203(b)(3)(D) of the Act and sections 410(a)(5)(D) and 411(a)(6)(D) of the Code (rule of parity) to such plans.

(c) *Multiple employer plans—*(1) *Eligibility to participate and vesting.* A multiple employer plan shall be treated as if all maintaining employers constitute a single employer so long as an employee is employed in either covered service or contiguous noncovered service. Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee’s service for eligibility to participate and vesting purposes, all covered service with an employer or employers maintaining the plan and all contiguous noncovered service with an employer or employers maintaining the plan shall be taken into account. Thus, for example, if an employee in service covered under a multiple employer plan leaves covered service with one employer maintaining the plan and is employed immediately thereafter in covered service with another employer maintaining the plan, the plan is required to credit all hours of service with both employers for purposes of participation and vesting. If an employee moves from contiguous noncovered to covered service, or from covered service to contiguous noncovered service, with the same employer, the plan is required to credit all hours of service with such employer for purposes of eligibility to participate and vesting.

(2) *Benefit accrual.* A multiple employer plan shall be treated as if all maintaining employers constitute a single employer so long as an employee is employed in covered service. Accordingly, except as referred to in paragraph (a)(2) and provided in paragraph (f) of this section, in determining a participant’s service for benefit accrual purposes, all covered service with an employer or employers maintaining the plan shall be taken into account.

(3) *Definitions.* (i) For purposes of this section, the term “multiple employer plan” shall mean a multiemployer plan as defined in section 3(37) of the Act and section 414(f) of the Code or a multiple employer plan within the meaning of sections 413 (b) and (c) of the

Code and the regulations issued thereunder. Notwithstanding the preceding sentence, a plan maintained solely by members of the same controlled group of corporations within the meaning of paragraph (d) of this section or by trades or businesses which are under the common control of one person or group of persons within the meaning of paragraph (e) of this section shall not be deemed to be a multiple employer plan for purposes of this section, and such plan is required to apply the rules under this section which are applicable to controlled groups of corporations or commonly controlled trades or businesses respectively.

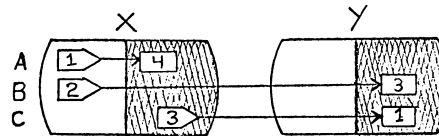
(ii) For purposes of this section, the term "covered service" shall mean service with an employer or employers maintaining the plan within a job classification or class of employees covered under the plan.

(iii) For purposes of this section the term "noncovered service" shall mean service with an employer or employers maintaining the plan which is not covered service.

(iv)(A) *General.* For purposes of this section noncovered service shall be deemed "contiguous" if (1) the noncovered service precedes or follows covered service and (2) no quit, discharge, or retirement occurs between such covered service and noncovered service.

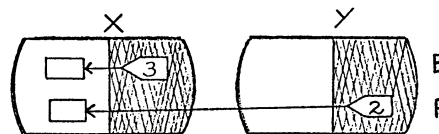
(B) *Exception.* Notwithstanding the preceding paragraph, in the case of a controlled group of corporations within the meaning of paragraph (d) of this section or trades or businesses which are under the common control of one person or group of persons within the meaning of paragraph (e) of this section, any transfer of an employee from one member of the controlled group to another member or from one trade or business under common control to another trade or business under the common control of the same person or group of persons shall result in the period of noncovered service which immediately precedes or follows such transfer being deemed "noncontiguous" for purposes of paragraph (c) of this section.

DIAGRAM NO. 1. (MULTIPLE EMPLOYER PLAN.)



Assume for purposes of diagram No. 1 that X and Y are both employers who are required to contribute to a multiple employer plan and that neither employer maintains any other plan. Covered service is represented by the shaded segments of the diagram. After completing 1 year of noncovered service, employee A immediately enters covered service with X and completes 4 years of covered service. For purposes of eligibility to participate and vesting, the plan is required to credit employee A with 5 years of service with employer X because his period of service with X includes a period of covered service and a period of contiguous noncovered service. On the other hand, employee B, immediately after completing 2 years of noncovered service with X, enters covered service with Y. Because B quit employment with X, his period of noncovered service with X is not contiguous and, therefore, is not required to be taken into account. In the case of employee C, the plan is required to take into account all service with employers X and Y because employee C is employed in covered service with both employers.

DIAGRAM NO. 2. (MULTIPLE EMPLOYER.)



The multiple employer plan rules with respect to noncovered service are illustrated in diagram No. 2. Assume that X and Y are both employers who are required to contribute to a multiple employer plan and that neither employer maintains any other plan. Covered service is represented by the shaded segments of the diagram. Employee E completed 3 years of service with employer X in covered service and then immediately entered noncovered service with X. Because E's noncovered service is contiguous, the plan is required to take into account all service with X for purposes of eligibility to participate and vesting under the multiple employer plan. Employee F does not continue to receive credit; F quit the employment of Y and entered noncovered service with X.

(d) *Controlled groups of corporations.*

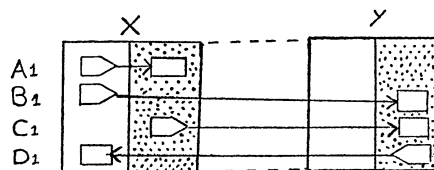
(1) With respect to a plan maintained by one or more members of a controlled group of corporations (within the meaning of section 1563(a) of the Code, determined without regard to sections 1563(a)(4) and (e)(3)(C), all employees of such corporations shall be treated as employed by a single employer.

(2) Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee's service for eligibility to participate and vesting purposes, all service with any employer which is a member of the controlled group of corporations shall be taken into account. Except as referred to in paragraph (a)(2) and provided in paragraph (f) of this section, in determining a participant's service for benefit accrual purposes, all service during periods of participation covered under the plan with any employer which is a member of the controlled group of corporations shall be taken into account.

(e) *Commonly controlled trades or businesses.* With respect to a plan maintained only by one or more trades or businesses (whether or not incorporated) which are under common control within the meaning of section 414(c) of the Code and the regulations issued thereunder, all employees of such trades or businesses shall be treated as employed by a single employer. Accordingly, except as referred to in paragraph (a)(1) and provided in paragraph (f) of this section, in determining an employee's service for eligibility to participate and vesting purposes, all service with any employer which is under common control shall be taken into account. Except as referred to in paragraph (a)(2) and provided in paragraph (f) of this section, in determining a participant's service for benefit accrual purposes, all service during periods of participation covered under the plan with any employer

which is under common control shall be taken into account.

DIAGRAM NO. 3. (CONTROLLED GROUP OR COMMONLY CONTROLLED TRADE OR BUSINESS.)



Assume for purposes of diagram No. 3 that X and Y are either members of the same controlled group of corporations or trades or businesses which are under the same common control. The dotted segments of the diagram represent plan coverage under plans separately maintained by X and Y. Neither employer maintains any other plans. Because A1, B1, C1, and D1 have their service with X and Y treated as if X and Y were a single employer, the plans are required to take into account all service with X and Y for eligibility to participate and vesting purposes.

(f) *Special break in service rules.* (1) In addition to service which may be disregarded under the statutory provisions referred to in paragraph (a) of this section, a multiple employer plan may disregard noncontiguous non-covered service.

(2) In the case of a plan maintained solely by one or more members of a controlled group of corporations or one or more trades or businesses which are under common control, if one of the maintaining employers is also a participating employer in a multiple employer plan which includes other employers which are not members of the controlled group or commonly controlled trades or businesses, service with such other employer maintaining the multiple employer plan may be disregarded by the controlled group or commonly controlled plan.

DIAGRAM NO. 4. (BREAK IN SERVICE RULES.)

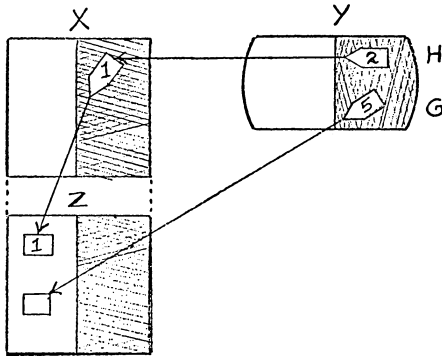


Diagram No. 4 illustrates the break in service rules of paragraph (f) of this section. Assume for purposes of diagram No. 4 that employer Z is controlled by employer X but employer Y's only relation to X and Z is that X, Y, and Z are required to contribute to a multiple employer plan. The multiple employer plan, represented by the shaded segments of the diagram, provides for 100 percent vesting after 10 years. X, Y, and Z maintain no other plans.

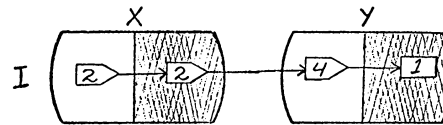
Employee G completed 5 years of covered service with employer Y, and then moved to noncovered service with employer Z. G's noncovered service is noncontiguous (see employee F in diagram No. 2 above), and such service may be disregarded for purposes of the multiple employer plan under the rule in paragraph (f)(1).

Employee H completed 2 years of covered service with employer Y and then entered covered service with employer X for 1 year. The multiple employer plan is required to credit H with 3 years of service. H then entered noncovered service with employer Z. H's noncovered service is noncontiguous (see employee F in diagram No. 2 above), and such service may be disregarded for purposes of the multiple employer plan under the rule in paragraph (f)(1).

(g) *Rule of parity.* For purposes of sections 202(b)(4) and 203(b)(3)(D) of the Act and sections 410(a)(5)(D) and 411(a)(6)(D) of the Code, in the case of an employee who is a nonvested participant in employer-derived accrued benefits at the time he incurs a 1-year break in service, years of service completed by such employee before such break are not required to be taken into account if at such time he incurs consecutive 1-year breaks in service which equal or exceed the aggregate number of years of service before such breaks.

This is so even though the period of noncontiguous noncovered service with an employer or employers maintaining the plan may subsequently be deemed contiguous as the result of the employee entering covered service with the same employer maintaining the plan and, consequently, such plan may be required to credit such service.

DIAGRAM NO. 5. (RULE OF PARITY)



Assume for purposes of diagram No. 5 that X and Y are both employers who are required to contribute to a multiple employer plan which contains a provision applying the rule of parity. Covered service is represented by the shaded segments of the diagram. The plan has 100% vesting after 10 years. X and Y maintain no other plan.

The multiple employer plan credited employee I with 4 years of service with X when he quit employment with X and entered noncovered service with Y. As a result of 4 years of noncontiguous noncovered service with Y, employee I incurred 4 consecutive 1-year breaks in service, so that the multiple employer plan may disregard his prior service (i.e., the 4 years of service with X).

When employee I entered covered service with Y (as a "new employee"), his 4 years of noncontiguous service with Y became contiguous for purposes of the multiple employer plan. Consequently, after 1 year of covered service with Y, the plan is required to credit employee I with 5 years of service.

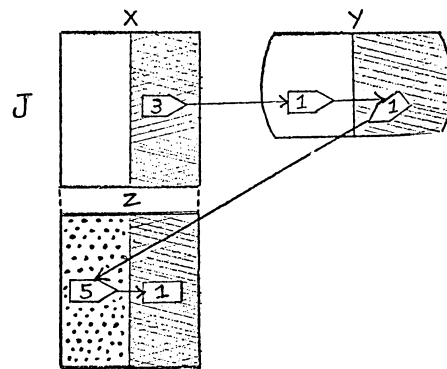
(h) *Example.* Under section 203(b)(1)(C) of the Act and section 411(a)(4)(C) of the Code, service with an employer prior to such employer's adoption of the plan need not be taken into account. The following example demonstrates that this rule applies even if an employee is employed in contiguous noncovered service. The example is applicable to any plan subject to the rules of this section. However, for purposes of clarity, the example assumes that X and Y are required to contribute to a multiple employer plan.

Assume that employee D completed 3 years of covered service with employer Y as of the date X adopts the plan. Immediately after X's adoption of the plan D left covered service with Y and D entered covered service with X. His prior covered service with Y is

required to be counted, and D remains a participant.

On the other hand, if D had entered service with X any time prior to X's adoption of the plan and subsequently was covered by the plan when X adopted it, his prior service with Y must also be counted, unless such service may be disregarded under the break in service rules because the period of service with X before X's adoption of the plan was equal to or greater than his prior service with Y. For example, if X adopted the plan three years after D began employment with X, and consequently after D had incurred 3 consecutive 1-year breaks in service, his prior service with Y could be disregarded.

(I) COMPREHENSIVE DIAGRAM. (No. 6)



Assume for purposes of diagram No. 6 that employer Z is controlled by employer X within the meaning of paragraph (d) but employer Y's only relation to X and Z is that X, Y and Z are required to contribute to a multiple employer plan. The shaded segments represent coverage under the multiple employer plan which contains a provision applying the rule of parity. The dotted segment represents a separate plan maintained by Z. Both plans have 100% vesting after 10 years.

Employee J completed 3 years of service with employer X in covered service with the

multiple employer plan. J then entered non-covered service with Y and remained with Y for 1 year, and thereby incurred a 1-year break in service under the multiple employer plan. J then entered covered service with employer Y, thereby causing the noncovered service with Y to become contiguous. Covered service with X and contiguous non-covered and covered service with Y must be taken into account for purposes of the multiple employer plan; accordingly, that plan is required to credit J with a total of 5 years of service.

J then left service with Y and entered non-covered service (with respect to the multiple employer plan) with Z. J remained in non-covered service with Z (with respect to the multiple employer plan) for 5 years and thereby incurred 5 consecutive 1-year break in service for purposes of the multiple employer plan. Consequently, the prior service with X and Y may be disregarded for purposes of the multiple employer plan.

J then entered covered service under the multiple employer plan with Z and completed 1 year of service. Because the 5 years of noncovered service with Z is contiguous with the 1 year of covered service, the multiple employer plan is now required to credit J with 6 years of service for purposes of eligibility to participate and vesting.

For purposes of Z's controlled group plan (*i.e.*, dotted segment), employee J is entitled to receive credit for 9 years of service. The 3 years of service with X, a member of the controlled group, may not be disregarded under the rule of parity because J incurred only 2 consecutive 1-year breaks in service while employed with Y. When J entered service with Z covered under Z's controlled group plan, the 3 years of service with X were still required to be credited by the controlled group plan. In addition, J must receive credit for the 5 years of service with Z covered under the controlled group plan. Finally, when J moved to service with Z covered under the multiple employer plan the controlled group plan was required to credit J with an additional year of service.

SUBCHAPTER E [RESERVED]